

**CITY OF SPANISH FORT  
CITY COUNCIL MEETING  
AGENDA**

Regular Meeting  
March 4, 2024  
Spanish Fort Community Center  
6:00 p.m.

- I. CALL TO ORDER
- II. ROLL CALL
- III. INVOCATION
- IV. PLEDGE OF ALLEGIANCE
- V. APPROVAL OF THE MINUTES OF THE PREVIOUS MEETINGS

Work Session February 19, 2024  
Regular Meeting February 19, 2024

- VI. REPORTS OF COMMITTEES AND OFFICERS
- VII. PUBLIC PARTICIPATION
- VIII. ANNOUNCEMENTS

On Saturday, March 23, 2024, the Baldwin Pops Band will be performing a free concert at the Spanish Fort Community Center at 6:00 p.m.

Congressman Jerry Carl has sent out a survey to Spanish Fort residents asking for feedback about our postal service. Please check your email inbox and fill out the survey. If you did not receive a survey, please send your comments to [jerry.carl@mail.house.gov](mailto:jerry.carl@mail.house.gov). It is important the Congressman and his staff receive your feedback.

- IX. OLD BUSINESS
- X. NEW BUSINESS

Swearing in of Fire Department Employee

Ordinance No. 657-2024-----An Ordinance Amending Ordinance No. 51-96 of the City of Spanish Fort Changing the Zoning Classification of Certain Property Located at 7080 Spanish Fort Blvd., Spanish Fort, Alabama, from R-1 to B-2

Ordinance No. 658-2024-----An Ordinance Amending Ordinance No. 1994-11 of the City of Spanish Fort to Amend the Levy of a Privilege or License Tax on Persons, Firms or Corporations in the Business of Selling at Retail Tangible Personal Property in the City of Spanish Fort, Alabama, or within Its Police Jurisdiction; Providing for the Collection of THE Said Taxes; and Providing Penalties for the Violation of Said Ordinance

Ordinance No. 659-2024-----An Ordinance Amending Ordinance No. 1995-30 of the City of Spanish Fort Providing for the Levy and Assessment of a Tax on the Leasing or Renting of Tangible Personal Property

Ordinance No. 660-2024-----An Ordinance Amending Ordinance No. 192-2003 of the City of Spanish Fort Providing and Levying a Tax on Cigarettes, Tobacco Products and Rolling Papers

Ordinance No. 661-2024-----An Ordinance Amending Ordinance No 1995-29 of the City of Spanish Fort Providing for the Levy of a Use or Excise Tax against Persons, Firms or Corporations which Use or Consume Personal Property in the City of Spanish Fort Alabama, or within Its Police Jurisdiction and Providing for the Collection of Such Taxes

Resolution No. 1394-2024----A Resolution Approving of an Act to be Enacted by the Legislature Amending Chapter 99B of the *Code of Alabama* (1975) relating to Capital Improvement Cooperative Districts

Resolution No. 1395-2024----A Resolution Authorizing the Mayor to Execute an Agreement between the City of Spanish Fort and Matthew Jones Engineering, LLC

XI. ADJOURN TO NEXT MEETING

XII. Work Session and Regular Meeting, March 18, 2024

## Spanish Fort City Council

### Minutes, Work Session, Monday, February 19, 2024

The City Council of the City of Spanish Fort, Alabama, met Monday, February 19, 2024, at 4:15 p.m., at the Spanish Fort Community Center, that being the scheduled date, time and place of such meeting.

The following Councilmembers were present: Curt Smith, Carl Gustafson, Shane Perry, J. R. Smith, Mary Brabner and Mayor McMillan. A quorum being present, the work session proceeded.

The Council discussed general municipal business.

Mr. David Conner, City Attorney, made a recommendation that the City Council go into executive session in accordance with the Alabama Open Meetings Act to discuss the general reputation and character of certain individuals and, subject to the limitations set out therein, to discuss the job performance of certain public employees; to discuss the legal ramifications of and legal options for pending litigation, controversies not yet being litigated, but imminently likely to be litigated, or imminently likely to be litigated if the governmental body pursues a proposed course of action. Mr. Conner made an oral declaration that the exceptions under the Open Meetings Act are applicable to the planned discussion. A motion was made by Councilmember J. R. Smith and seconded by Councilmember Brabner to go into executive session at 4:45 p.m. to discuss the aforementioned matters. Mayor McMillan called for the polling of votes. Voting "aye" were Councilmembers Curt Smith, Gustafson, Perry, J. R. Smith, Brabner and Mayor McMillan. Voting "nay" were none. Mayor McMillan announced that the executive session would last approximately 45 minutes and that the Work Session would resume upon the conclusion of the executive session.

The Council reconvened at 5:28 p.m.

The Council discussed general municipal business.

There being no further business before the Council, the work session adjourned at 5:29 p.m.

*Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2024.*

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Rebecca A. Gaines  
City Clerk

**Spanish Fort City Council  
Minutes, Regular Meeting, February 19, 2024**

**CALL TO ORDER**

The City Council of the City of Spanish Fort, Alabama, met Monday, February 19, 2024, at 6:00 p.m., at the Spanish Fort Community Center, that being the scheduled date, time and place of such meeting.

**ROLL CALL**

The following Councilmembers were present: Curt Smith, Carl Gustafson, Shane Perry, J. R. Smith, Mary Brabner and Mayor McMillan.

**INVOCATION AND PLEDGE OF ALLEGIANCE**

The invocation and Pledge of Allegiance was led by Councilmember J. R. Smith.

**APPROVAL OF MINUTES OF PREVIOUS MEETINGS**

The minutes of the Meeting and Work Session of February 5, 2024, were distributed to each member, and Mayor McMillan called for any corrections. No corrections being offered, Mayor McMillan declared the minutes approved as written.

**REPORTS OF COMMITTEES AND OFFICERS**

There were no reports.

**PUBLIC PARTICIPATION**

There was none.

**ANNOUNCEMENTS**

Congressman Jerry Carl has sent out a survey to Spanish Fort residents asking for feedback about our postal service. Please check your email inbox and fill out the survey. If you did not receive a survey, please send your comments to [jerry.carl@mail.house.gov](mailto:jerry.carl@mail.house.gov). It is important the Congressman and his staff receive your feedback.

**OLD BUSINESS**

There was none.

**NEW BUSINESS**

***Promotion Ceremony for Fire Department Employee***

Mayor McMillan and Fire Chief Roger Few recognized Fire Department Employee Joshua Reno who was recently promoted from Firefighter I to Apparatus Operator I.

***Announcement of Planning Commission Appointment***

Mayor McMillan announced the appointment of Building Inspector Eric Tompkins to the Planning Commission to replace Environmentalist Caleb Downs.

***Ordinance No. 657-2024***

Mayor McMillan introduced Ordinance No. 657-2024, an ordinance amending Ordinance No. 51-96 of the City of Spanish Fort Changing the Zoning Classification of Certain Property Located at 7080 Spanish Fort Blvd., Spanish Fort, Alabama, from R-1 to B-2. David Conner explained the proposed ordinance. Discussion followed.

Mayor McMillan announced a public hearing will be held at the Monday, March 4, 2024, City Council meeting to hear comments from those in favor of or in opposition to the ordinance.

***Resolution No. 1386-2024***

Mayor McMillan presented Resolution No. 1386-2024, a resolution authorizing the Mayor to execute a lease agreement between the City of Spanish Fort and NAFECO. David Conner explained the proposed resolution. Discussion followed.

A motion was made by Councilmember J. R. Smith and seconded by Councilmember Gustafson to adopt Resolution No. 1386-2024. Discussion followed. Mayor McMillan called for a polling of votes. Voting “aye” were Councilmembers Curt Smith, Gustafson, Perry, J. R. Smith, Brabner and Mayor McMillan. Voting “nay” were none. Mayor McMillan declared the Resolution adopted.

***Resolution No. 1387-2024***

Mayor McMillan presented Resolution No. 1387-2024, a resolution authorizing the Mayor to execute an agreement between the City of Spanish Fort and Thompson Engineering. David Conner explained the proposed resolution. Discussion followed.

A motion was made by Councilmember Gustafson and seconded by Councilmember Brabner to adopt Resolution No. 1387-2024. Discussion followed. Mayor McMillan called for a polling of votes. Voting “aye” were Councilmembers Curt Smith, Gustafson, Perry, J. R. Smith, Brabner and Mayor McMillan. Voting “nay” were none. Mayor McMillan declared the Resolution adopted.

***Resolution No. 1389-2024***

Mayor McMillan presented Resolution No. 1389-2024, a resolution authorizing the Mayor to enter into an agreement with Sunset Contracting, Inc., for repairs at Spanish Village Drive and Weatherford Court. David Conner explained the proposed resolution. Discussion followed.

A motion was made by Councilmember Brabner and seconded by Councilmember Curt Smith to adopt Resolution No. 1389-2024. Discussion followed. Mayor McMillan called for a polling of votes. Voting “aye” were Councilmembers Curt Smith, Gustafson, Perry, J. R. Smith, Brabner and Mayor McMillan. Voting “nay” were none. Mayor McMillan declared the Resolution adopted.

***Resolution No. 1390-2024***

Mayor McMillan presented Resolution No. 1390-2024, a resolution disposing of surplus property. David Conner explained the proposed resolution. Discussion followed.

A motion was made by Councilmember J. R. Smith and seconded by Councilmember Brabner to adopt Resolution No. 1390-2024. Discussion followed. Mayor McMillan called for a polling of votes. Voting “aye” were Councilmembers Curt Smith, Gustafson, Perry, J. R. Smith, Brabner and Mayor McMillan. Voting “nay” were none. Mayor McMillan declared the Resolution adopted.

***Resolution No. 1391-2024***

Mayor McMillan presented Resolution No. 1391-2024, a resolution awarding a bid for the Integrity Park Phase II project. David Conner explained the proposed resolution. Discussion followed.

A motion was made by Councilmember Perry and seconded by Councilmember J. R. Smith to adopt Resolution No. 1391-2024. Discussion followed. Mayor McMillan called for a polling of votes. Voting “aye” were Councilmembers Curt Smith, Gustafson, Perry, J. R. Smith, Brabner and Mayor McMillan. Voting “nay” were none. Mayor McMillan declared the Resolution adopted.

***Resolution No. 1393-2024***

Mayor McMillan presented Resolution No. 1393-2024, a resolution appointing a supernumerary member to the City of Spanish Fort Board of Adjustment. David Conner explained the proposed resolution. Discussion followed.

A motion was made by Councilmember J. R. Smith and seconded by Councilmember Gustafson to adopt Resolution No. 1393-2024. Discussion followed. Mayor McMillan called for a polling of votes.

Voting “aye” were Councilmembers Curt Smith, Gustafson, Perry, J. R. Smith, Brabner and Mayor McMillan. Voting “nay” were none. Mayor McMillan declared the Resolution adopted.

**ADJOURNMENT**

There being no further business before the Council, the meeting adjourned at 6:18 p.m.

*Approved this \_\_\_\_ day of \_\_\_\_\_, 2024.*

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Rebecca A. Gaines  
City Clerk.

**ORDINANCE NO. 657-2024**

**AN ORDINANCE AMENDING ORDINANCE NO. 51-96 OF THE CITY OF SPANISH FORT CHANGING THE ZONING CLASSIFICATION OF CERTAIN PROPERTY LOCATED AT 7080 SPANISH FORT BLVD., SPANISH FORT, ALABAMA, FROM R-1 TO B-2**

**WHEREAS**, the owner of the property made the subject of this change in zoning classification has requested that the zoning classification on the property be changed from R-1 to B-2; and

**WHEREAS**, the Planning Commission of the City of Spanish Fort, Alabama, held a meeting on Monday, February 12, 2024, and the City Council of the City of Spanish Fort held a meeting on \_\_\_\_\_, 2024, for the purpose of receiving public comments on the proposed change in zoning classification.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SPANISH FORT, ALABAMA, AS FOLLOWS:**

**SECTION 1. Change in Zoning Classification.**

Ordinance No. 51-96, as amended, of the City of Spanish Fort, Alabama, is hereby amended by changing the zoning classification of certain property located at 7080 Spanish Fort Blvd., Spanish Fort, Alabama, bearing tax parcel number 05-32-09-29-2-001-031.000, and being more particularly described in Exhibit 1 which is attached hereto and made a part of this Ordinance as though set forth fully herein, from R-1, Single Family Low Density Residential District, to B-2, Local Business District. A map of the surrounding area is attached as Exhibit 2.

**SECTION 2. Change in Zoning Map.**

The official zoning map for the City of Spanish Fort is hereby amended, changed or altered to reflect the change in zoning classification from R-1, Single Family Low Density Residential District, to B-2, Local Business District, on the above referenced property.

**SECTION 3. Repealer Clause.**

Any ordinance heretofore adopted by the City Council of the City of Spanish Fort, Alabama, which is in conflict with this Ordinance is hereby repealed to the extent of such conflict. Except as expressly amended herein, all terms and provisions contained in Ordinance No. 51-96, as amended, shall remain in full force and effect.

**SECTION 4. Severability Clause.**

If any part, section or subdivision of this Ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Ordinance, which shall continue in full force and effect notwithstanding such holding.

**SECTION 5. Effective Date.**

This Ordinance shall become effective upon its adoption or as otherwise required by state law.

***ADOPTED and APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.***

\_\_\_\_\_  
Michael M. McMillan  
Mayor

ATTEST:

\_\_\_\_\_  
Rebecca A. Gaines, CMC  
City Clerk

**EXHIBIT "1" TO ORDINANCE NO. 643-2023**

LEGAL DESCRIPTION:

FROM THE SOUTHEAST CORNER OF LOT 12 IN THE FIRST ADDITION TO SPANISH FORT, ACCORDING TO THE OFFICIAL MAP OR PLAT THEREOF WHICH IS RECORDED IN MAP BOOK 3, PAGE 8, BALDWIN COUNTY, ALABAMA RECORDS, RUN THENCE NORTH ALONG THE EAST LINE OF LOT 12 A DISTANCE OF 440 FEET TO A POINT; RUN THENCE NORTH ALONG THE EAST LINE OF LOT 12 A DISTANCE OF 324.9 FEET TO THE NORTHEAST CORNER OF SAID LOT 12; RUN THENCE IN A WESTERLY DIRECTION ALONG THE NORTH LINE OF THE SAID LOT A DISTANCE OF 202.4 FEET TO THE NORTHWEST CORNER OF SAID LOT 12; RUN THENCE SOUTHERLY ALONG THE WEST LINE OF LOT 12 A DISTANCE OF 288.6 FEET TO A POINT; RUN THENCE EAST 200 FEET TO THE POINT OR PLACE OF BEGINNING, SUBJECT TO EASEMENTS AND RESTRICTIONS CONTAINED IN THE DEED TO THE PARTIES HERETO, WHICH DEED IS DATED APRIL 16, 1962, RECORDED IN DEED BOOK 317 N.S., PAGES 282-3, AND ALSO SUBJECT TO MORTGAGE FROM THE PARTIES TO BALDWIN COUNTY SAVINGS AND LOAN ASSOCIATION WHICH MORTGAGE IS DATED MAY 7, 1962, AND RECORDED IN MORTGAGE BOOK 390, PAGES 328-9.





**Spanish\_Fort\_Zoni**

**ZONING\_CLA**

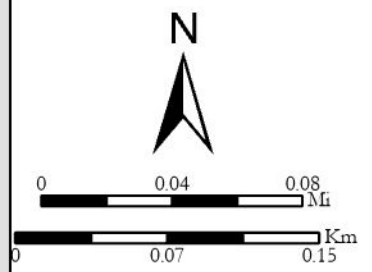
- B-1: Professional Business
- B-2: Local Business
- B-3: General Business
- B-4: Major Business District
- Baldwin County
- City of Spanish Fort
- M-1: Light Industrial

- PUD: Planned Unit Development
- R-1: Low-Density Single-Family Residential
- R-2: Medium-Density Single-Family Residential

- R-3: Multi-Family Residential
- R-3D: Medium Density Multi-Family Residential
- R-4: Manufactured/Mobile Home Residential
- State of Alabama

- T-1: Telecommunication Tower District
- B-5: Hotel/Motel
- <all other values>
- SF\_City\_Limits\_0124

- SVC



**ORDINANCE NO. 658-2024**

**AN ORDINANCE AMENDING ORDINANCE NO. 1994-11 OF THE CITY OF SPANISH FORT TO AMEND THE LEVY OF A PRIVILEGE OR LICENSE TAX ON PERSONS, FIRMS OR CORPORATIONS IN THE BUSINESS OF SELLING AT RETAIL TANGIBLE PERSONAL PROPERTY IN THE CITY OF SPANISH FORT, ALABAMA, OR WITHIN POLICE JURISDICTION; PROVIDING FOR THE COLLECTION OF THE SAID TAXES; AND PROVIDING PENALTIES FOR THE VIOLATION OF THIS ORDINANCE**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SPANISH FORT, ALABAMA, AS FOLLOWS:**

**SECTION 1. Amendment.** Ordinance No. 1994-11, as amended, is hereby amended to delete Section 2 of the Ordinance in its entirety.

**SECTION 2. Repealer Clause.**

Any ordinance heretofore adopted by the City Council of the City of Spanish Fort, Alabama, which is in conflict with this Ordinance is hereby repealed to the extent of such conflict. Except as expressly amended herein, all terms and provisions contained in Ordinance No. 1994-11, as amended, shall remain in full force and effect.

**SECTION 3. Severability Clause.**

If any part, section or subdivision of this Ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Ordinance, which shall continue in full force and effect notwithstanding such holding.

**SECTION 4.** This Resolution shall become effective on July 1, 2024.

***ADOPTED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.***

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MICHAEL M. MCMILLAN  
MAYOR

ATTEST:

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REBECCA A. GAINES, CMC  
CITY CLERK

**ORDINANCE NO. 659-2024**

**AN ORDINANCE AMENDING ORDINANCE NO. 1995-30 OF THE CITY OF SPANISH FORT, ALABAMA, PROVIDING FOR THE LEVY AND ASSESSEMENT OF A TAX ON THE LEASING OR RENTING OF TANGIBLE PERSONAL PROPERTY**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SPANISH FORT, ALABAMA, AS FOLLOWS:**

**SECTION 1. Amendment.** Section 3 of Ordinance No. 1995-30 is hereby amended to read in its entirety as follows:

Section 3. Levy and Amount of Tax. There is hereby levied and imposed, in addition to all other taxes now imposed by law, a privilege or license tax upon each person engaging or continuing within the corporate limits of the City, the business of leasing or renting tangible personal property at the rate of one and one-half percent (1.5%) of the gross proceeds derived by the lessor from the lease or rental of tangible personal property; provided, that the said privilege or license tax on each such person engaging or continuing within the corporate limits of the City of Spanish Fort in the business of leasing or renting any automotive vehicle or truck trailer, semi-trailer or house trailer, shall be at the rate of .75% of the gross proceeds derived by the lessor from the lease or rental of such automotive vehicle or truck trailer, semi-trailer or house trailer; provided further, that the tax levied in this Ordinance shall not apply to any leasing or rental, as lessor by the State of Alabama, or any municipality or county in the State of Alabama, or any public corporation organized under the laws of the State of Alabama, including without limitation, any corporation organized under the provisions of *Alabama Code* (1975) §§11-54-80 through 11-54-101; provided further, that the privilege tax or license tax on each person engaging or continuing in this City in the business of the leasing or renting of linens and garments shall be at the rate of .75% of the gross proceeds derived by the lessor from the lease or rental of such linens and garments.

**SECTION 2. Repealer Clause.**

Any ordinance heretofore adopted by the City Council of the City of Spanish Fort, Alabama, which is in conflict with this Ordinance is hereby repealed to the extent of such conflict. Except as expressly amended herein, all terms and provisions contained in Ordinance No. 1995-30, as amended, shall remain in full force and effect.

**SECTION 3. Severability Clause.**

If any part, section or subdivision of this Ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Ordinance, which shall continue in full force and effect notwithstanding such holding.

**SECTION 4.** This Resolution shall become effective on July 1, 2024.

***ADOPTED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.***

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MICHAEL M. MCMILLAN  
MAYOR

ATTEST:

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REBECCA A. GAINES, CMC  
CITY CLERK

**ORDINANCE NO. 660-2024**

**AN ORDINANCE AMENDING ORDINANCE NO. 192-2003 OF THE CITY OF SPANISH FORT PROVIDING AND LEVYING A TAX ON CIGARETTES, TOBACCO PRODUCTS AND ROLLING PAPERS**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SPANISH FORT, ALABAMA, AS FOLLOWS:**

**SECTION 1. Amendment**

of Ordinance No. 192-2003 is hereby amended to delete Section 3 of said Ordinance in its entirety.

**SECTION 2. Repealer Clause.**

Any ordinance heretofore adopted by the City Council of the City of Spanish Fort, Alabama, which is in conflict with this Ordinance is hereby repealed to the extent of such conflict. Except as expressly amended herein, all terms and provisions contained in Ordinance No. 192-2003, as amended, shall remain in full force and effect.

**SECTION 3. Severability Clause.**

If any part, section or subdivision of this Ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Ordinance, which shall continue in full force and effect notwithstanding such holding.

**SECTION 4.** This Resolution shall become effective July 1, 2024\.

***ADOPTED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.***

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MICHAEL M. MCMILLAN  
MAYOR

ATTEST:

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REBECCA A. GAINES, CMC  
CITY CLERK

**ORDINANCE NO. 661-2024**

**AN ORDINANCE AMENDING ORDINANCE NO. 1995-29 OF THE CITY OF SPANISH FORT PROVIDING FOR THE LEVY OF A USE OR EXCISE TAX AGAINST PERSONS, FIRMS OR CORPORATIONS WHICH USE OR CONSUME TANGIBLE PERSONAL PROERTY IN THE CITY OF SPANISH FORT, ALABAMA, OR WITHIN ITS POLICE JURISDICTION; AND PROVIDING FOR THE COLLECTION OF SUCH TAXES**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SPANISH FORT, ALABAMA, AS FOLLOWS:**

**SECTION 1. Amendment.** Ordinance No. 1995-29 is hereby amended to delete tSection 2 of the Ordinance in its entirety.

**SECTION 2. Repealer Clause.** Any ordinance heretofore adopted by the City Council of the City of Spanish Fort, Alabama, which is in conflict with this Ordinance is hereby repealed to the extent of such conflict. Except as expressly amended herein, all terms and provisions contained in Ordinance No. 1995-29, as amended, shall remain in full force and effect.

**SECTION 3. Severability Clause.**

If any part, section or subdivision of this Ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Ordinance, which shall continue in full force and effect notwithstanding such holding.

**SECTION 4.** This Resolution shall become effective on July 1, 2024.

***ADOPTED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.***

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MICHAEL M. MCMILLAN  
MAYOR

ATTEST:

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REBECCA A. GAINES, CMC  
CITY CLERK

**RESOLUTION NO. 1394-2024**

**A RESOLUTION APPROVING OF AN ACT TO BE ENACTED BY THE LEGISLATURE AMENDING CHAPTER 99B OF THE *CODE OF ALABAMA* (1975) RELATING TO CAPITAL IMPROVEMENT COOPERATIVE DISTRICTS**

**WHEREAS**, it is the opinion of the City Council of the City of Spanish Fort, Alabama, that the public good requires that certain amendments to the provisions of the *Code of Alabama* (1975) regulating the formation and governance of Capital Improvement Cooperative Districts; and

**WHEREAS**, the City Council has caused to be prepared a Bill for introduction in the Legislature of Alabama, amending the provisions governing the establishment and adoption of Capital Improvement Cooperative Districts to allow the addition of new or additional areas or property or projects to a Capital Improvement Cooperative District and certain other amendments, among other changes.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SPANISH FORT, ALABAMA, AS FOLLOWS:**

**SECTION 1.** That the City Council of the City of Spanish Fort hereby approves and supports adoption of certain amendments to Chapter 99B of the *Code of Alabama* (1975), a copy of the proposed amendments is attached hereto as Exhibit 1.

**SECTION 2.** The City Clerk is hereby directed to forward a copy of this Resolution to members of the Alabama Legislature who represent the geographic areas encompassing the City of Spanish Fort.

**SECTION 3.** This Resolution shall become effective upon its adoption.

***ADOPTED and APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.***

MICHAEL M. MCMILLAN  
MAYOR

REBECCA A. GAINES  
CITY CLERK

City of Spanish Fort, Alabama  
Michael M. McMillan, Mayor

Proposed Amendments to CHAPTER 99B Capital Improvement Cooperative Districts.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 11-99B-5, Code of Alabama 1975, is amended to read as follows:

Section 11-99B-5

(a) The certificate of incorporation of any district may at any time and from time to time be amended in the manner provided in this section.

(b)(1) The board shall first adopt a resolution proposing an amendment to the certificate of incorporation which shall be set forth in full in the said resolution and which amendment may include, without limitation:

a. A change in the name of the district.

b. The addition to the project or projects of the district of a new project or projects and the proposed location thereof.

c. A change in the general description of the area or areas in which the district proposes to acquire each project or projects, including, but not limited to, the addition of new or additional areas or property.

ed. Any matters which might have been included in the original certificate of incorporation, or any change in any such matters.

(2) If any proposed amendment would add any new county, municipality, or public corporation as a member of a district, such proposed amendment shall include, in addition:

a. Provisions for election of at least one director by the governing body of each such new county, municipality, or public corporation.

b. Provisions for any change in the total number of directors that the board deems appropriate; and any provision to give the directors proportional voting power based upon the percentage of indebtedness and operating expenses of the district for which the entities electing the directors will be guarantors, or any other measure for establishing proportional voting power of directors; provided, however, that the total number of directors shall be at least equal to the number of directors immediately before the amendment, plus the number added pursuant to paragraph a. of this subdivision (2).

c. Any provision that the board deems appropriate for apportioning of the properties of the district upon its dissolution among its members.



(c) After the adoption by the board of a resolution proposing an amendment to the certificate of incorporation of the district, the chairman of the board or other chief executive officer of the district and the secretary of the district shall sign and file a written application in the name of and on behalf of the district, under its seal, with the governing body of each member and each additional county, municipality, or public corporation proposed to be added as a member of the district. Such application shall request each governing body with which the application is filed to adopt a resolution approving the proposed amendment and shall be accompanied by a certified copy of the said resolution adopted by the board proposing the said amendment to the certificate of incorporation, together with such documents in support of the application as the said chairman or other chief executive officer may consider appropriate.

(d) As promptly as may be practicable after the filing of the said application with any governing body pursuant to the provisions of subsection (c), that governing body shall review the said application and shall adopt a resolution either denying the said application or authorizing the proposed amendment.

(e) Following the adoption of such a resolution by that governing body that was the last to adopt such a resolution, but if and only if the governing body of each other county, public corporation, and municipality with whom such application was filed has theretofore adopted such a resolution, the chairman of the board or other chief executive officer of the district and the secretary of the district shall sign and file for record in the office of the judge of probate of the county where the certificate of incorporation of the district was filed a certificate in the name of and in behalf of the district, under its seal, reciting the adoption of said respective resolutions by the board and by each of the said governing bodies and setting forth the said proposed amendment. If the proposed amendment provides for a change in the name of the district, there shall be filed, together with the certificate required by the immediately preceding sentence, a certificate of the Secretary of State showing that the proposed new name of the district is not identical to that of any other corporation then in existence and organized under the laws of this state or so nearly similar to that of any other such corporation so as to lead to confusion and uncertainty. Upon the filing for record of each such certificate, the said amendment to the certificate of incorporation shall become effective. If the proposed amendment effects a change in the name of the district, the judge of probate shall promptly send a notice to the Secretary of State, advising him or her of such change.

Section 2. Section 11-99B-7, Code of Alabama 1975, is amended to read as follows:

#### Section 11-99B-7

Each district shall have the following powers, together with all powers incidental thereto or necessary to the discharge thereof in corporate form:

(1) To have succession by its corporate name for the duration of time, which may be in perpetuity, subject to the provisions of Section 11-99B-15, specified in its certificate of incorporation.

(2) To sue and to be sued in its own name in civil actions, and to defend civil actions against it; provided, that the district shall be deemed to be a "governmental entity" as defined in Chapter 93 of this title, for the purposes of limiting the damages for which the district and its members may be liable.

(3) To adopt and make use of a corporate seal and to alter the same at pleasure.

(4) To adopt and alter bylaws for the regulation and conduct of its affairs and business.

(5) To acquire, receive, and take, by purchase, gift, lease, devise, or otherwise, and to hold property of every description, whether located in one or more counties or municipalities.

(6) To make, enter into, and execute such licenses, contracts, agreements, leases, and other instruments and to take such other actions as may be necessary or convenient to accomplish any purpose for which the district was organized or to exercise any power expressly granted under this section.

(7) To plan, establish, develop, acquire, purchase, lease, construct, reconstruct, enlarge, improve, maintain, equip, and operate a project or projects or any part or combination of any thereof, whether located in one or more counties or municipalities, and to acquire franchises and easements deemed necessary or desirable in connection therewith.

(8) To sell and issue bonds of the district in order to provide funds for any corporate function, use, or purpose, any such bonds to be payable solely out of the revenues derived from any project or projects of the district, or pursuant to any guarantees by any of its members.

(9) To assume obligations secured by a lien on or payable out of or secured by a pledge of the revenues from any project or any part of any thereof that may be acquired by the district, any obligation so assumed to be payable by the district solely out of the revenues derived from the operation of any project or any thereof of the district.

(10) To pledge for payment of any bonds issued or obligations assumed by the district any revenues from which those bonds or obligations are made payable as provided in this chapter.

(11) To execute and deliver trust indentures in accordance with the provisions of this chapter.

(12) To exercise the power of eminent domain in the manner provided in and subject to the provisions of Title 18; provided, that this subdivision shall not be deemed to authorize the district to acquire, without the consent of the owner or owners thereof, any property or interests therein at the time dedicated to public use.

(13) To appoint, employ, contract with, and provide for the compensation of such officers, employees, and agents, including, but without limitation to, engineers, attorneys, accountants, architects, management consultants, and fiscal advisers as the business of the district may require.

(14) To make and enforce reasonable rules and regulations governing the use of any project owned or controlled by the district.

(15) To provide for such insurance as the board may deem advisable.

(16) To invest any funds of the district that the board may determine are not presently needed in the operation of its properties in any investment which may be made by any of its members.

(17) To cooperate with the United States of America, any agency or instrumentality thereof, the state, any county, municipality, or other political subdivision of the state and any public corporation and to make such contracts with them or any of them, as the board may deem advisable to accomplish the purpose for which the district was established.

(18) To sell and convey any of its properties that may have become obsolete or worn out or that may no longer be needed or useful as a part of any project of the district.

(19) To sell and convey, with or without valuable consideration, any of its projects or any portion thereof to any one or more counties, municipalities, or public corporations which have the corporate power to operate the project or portions thereof so conveyed and the property and income of which are not subject to taxation; provided, that any such sale and conveyance may be made only with the consent of each member of the district, any such consent to be evidenced by a resolution adopted by the governing body of each such member and only if any such conveyance would not constitute a breach of any then outstanding trust indenture or other agreement to which the district is a party.

(20) To enter into a management agreement or agreements with any person for the management by the district of any project or any part thereof upon such terms and conditions as may be mutually agreeable.

(21) To fix and revise from time to time reasonable rentals, licenses, rates, fees, and other charges for the use of any project or portion thereof, owned or operated by the district, from the users of the project or projects, or from the businesses or property owners within the district, which shall be approved by each governing body that is a member of the district to the extent required by its certificate of incorporation, and to collect all charges made by it.

(22) To require any user of any of its projects or any part thereof to make a reasonable deposit with the district in advance to insure the payment of rentals, licenses, rates, fees or charges, or costs of repair to any damage to the project and to be subject to the application to the payment thereof if and when delinquent.

Section 3. Section 11-99B-9, Code of Alabama 1975, is amended to read as follows:

#### Section 11-99B-9

As security for payment of the principal of and the interest on bonds issued or obligations assumed by it, the district may enter into a contract or contracts binding itself for the proper application of the proceeds of bonds and other funds, for the continued operation and maintenance of any project owned by it or any part or parts thereof, for the imposition and collection of reasonable rates, licenses, levies, rentals, fees and charges for and the promulgation of reasonable regulations respecting any such project, for the disposition and application of its gross revenues or any part thereof, and for any other act or series of acts not inconsistent with the provisions of this chapter for the protection of the bonds and other obligations being secured and the assurance that the revenues from such project will be sufficient to operate such project, maintain the same in good repair and in good operating condition, pay the principal of and the interest on any bonds payable from such revenues and maintain such reserves as may be deemed appropriate for the protection of the bonds, the efficient operation of such project, and the making of replacements thereof and capital improvements thereto.

Any contract pursuant to the provisions of this section may be set forth in any resolution of the board authorizing the issuance of bonds or the assumption of obligations or in any trust indenture made by the district under this chapter.

Section 4. Section 11-99B-11, Code of Alabama 1975, is amended to read as follows:

Section 11-99B-11

Rates, levies, fees, charges, rentals, and licenses for services rendered by the district or facilities provided by the district from any of its projects shall be so fixed and, from time to time, revised as at all times to provide funds at least sufficient, taking into account other sources for the payment thereof, to:

- (1) Pay the cost of constructing, operating, maintaining, repairing, replacing, extending, and improving the project or projects of the district and to pay the cost of any new or additional projects.
- (2) Pay the principal of and the interest on all bonds issued and obligations assumed by the district that are payable out of the revenues derived from operation of the project or projects of the district as the said principal and interest become due and payable.
- (3) Create and maintain such reserves for the foregoing purposes or any of them as may be provided in any trust indenture executed by the district under this chapter or in any resolutions of the board authorizing the issuance of bonds, the assumption of any obligation, or the acquisition of any such project.
- (4) Make such annual payments, if any, to the United States of America or any agency or instrumentality thereof, the state, municipalities, counties, departments, authorities, agencies, and political subdivisions of the state and any public corporations organized under the laws of the state as the district may have contracted to make.

Section 5. Section 11-99B-17, Code of Alabama 1975, is amended to read as follows:

Section 11-99B-17

Except as expressly otherwise provided in this chapter, no proceeding, notice, or approval shall be required for the incorporation of any district or the amendment of its certificate of incorporation, the acquisition of any property or project, or the issuance of any bonds, or trust indenture; provided, however, that nothing contained in this section shall be construed to exempt any district from the jurisdiction of the State Board of Health.

The district, every project of the district, and the rates, rentals, levies, fees, licenses, and charges thereof shall be exempt from all jurisdiction of and all regulation and supervision by the Public Service Commission and neither a public hearing nor the consent of the State Department of Finance shall be prerequisite to the issuance of bonds by the district.

Section 6. This act shall become effective 90 days following its passage and approval by the Governor, or its otherwise becoming law.

**RESOLUTION NO. 1395-2024**

**A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT  
BETWEEN THE CITY OF SPANISH FORT AND MATTHEW JONES  
ENGINEERING, LLC**

**WHEREAS**, the City of Spanish Fort wishes to enter into an agreement with Matthew Jones Engineering, LLC to provide design, bidding assistance and construction administration services for the resurfacing of the Spanish Fort Community Center parking lot in the City of Spanish Fort.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE  
CITY OF SPANISH FORT, ALABAMA, AS FOLLOWS:**

**SECTION 1.** The City Council hereby authorizes the Mayor to enter into an agreement with Matthew Jones Engineering, LLC, on behalf of the City as reflected in the proposal and agreement attached as Exhibit 1, subject to any changes to the terms and conditions approved by the Mayor.

**SECTION 2.** This Resolution shall become effective immediately upon its adoption.

***ADOPTED AND APPROVED this \_\_\_\_ day of \_\_\_\_\_ 2024.***

---

Michael M. McMillan  
Mayor

ATTEST:

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Rebecca A. Gaines  
City Clerk

# Exhibit 1

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# MATTHEW JONES ENGINEERING, LLC

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January 17, 2024

VIA EMAIL

Mr. Shannon Burroughs  
Public Works/Parks and Recreation Director  
City of Spanish Fort  
7361 Spanish Fort Boulevard  
Spanish Fort, AL 36527

**RE: Proposal for Engineering Services  
Resurfacing Spanish Fort Community Center Parking Lot**

Dear Mr. Burroughs,

I am pleased to provide this proposal to provide design, bidding assistance, and construction administration services for the above referenced project. The proposal herein addresses the services to be provided for this project and the proposed fee required to complete the scope of work.

**Project Understanding**

The City of Spanish Fort Community Center was constructed about a decade ago. Since this time period, the parking lot pavement has deteriorated in areas. The City would like to develop a project to resurface the parking lot.

**Scope of work**

***Task 1 – Evaluation of Existing Conditions***

Engineer will retain a Geotechnical Engineering firm to perform evaluations of the parking lot and pavement failure areas. Specifically, 4 to 5 asphalt cores will be taken and shallow borings will be performed in the core holes to develop an opinion regarding the failures and the most cost effective method of repairing the pavement. A report will be prepared documenting recommendations for repair. This task will be completed within about 3 weeks of receiving a notice to proceed.

***Task 2 – Development of Construction Plans and Contract***

Engineer will develop construction plans and specifications based on the information gathered in Task 1. The plans and specifications will be sufficient to bid and construct the project. At a minimum this will include documentation of existing conditions, proposed typical sections for repair, detailing of items to be constructed, tabulation of quantities, and development of project manual.

This task will be completed within four (4) weeks of completion of Task 1.

***Task 3 – Bidding Assistance***

Engineer will provide bidding assistance from the posting of the advertisement for bid to the execution of the construction contract. This service will include developing the advertisement for bids, conducting the pre-bid meeting, coordinating with prospective bidders regarding questions, review of bonds and other items during bid, evaluation and certification of bids received, and providing recommendation to award.

The typical time period to bid a project is approximately 6 to 8 weeks. Task will be billed on a time and materials basis.

***Task 4 – Construction Administration***

Engineer will provide construction administration services from contract execution to project closeout that include coordination with contractor, site visits not less than once per week throughout the construction period, review of monthly pay applications, and review of construction submittals and testing reports.

Task will be billed on a time and materials basis.



**Fee Schedule**

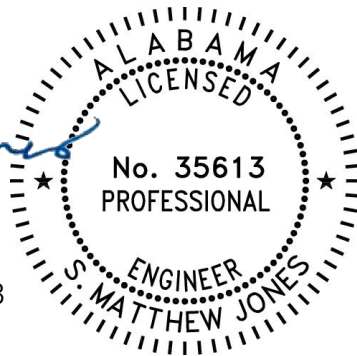
Task 1 – Evaluation:	\$4,430 Lump Sum
Task 2 – Plan and Contract Development:	\$11,425 Lump Sum
Task 3 – Bidding:	\$3,000 T&M NTE @ \$143 per hour
Task 4 – Construction Admin:	\$6,000 T&M NTE @ \$143 per hour
Reimbursable Expenses (CAD and Printing):	\$1,000

I appreciate the opportunity to provide engineering services for this project. Please feel free to contact me if you have any questions or would like to discuss further.

Best regards,



S. Matthew Jones, P.E  
Owner  
Alabama License No. 35613  
Date: 1/16/2024



# **SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES**

This is an Agreement between **the City of Spanish Fort** (Owner) and **Matthew Jones Engineering, LLC** (Engineer). Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as **Spanish Fort Community Center Resurfacing Project** (Project). Engineer's services under this Agreement (Services) are generally identified as **development of construction plans and specifications to repave the Spanish Fort Community Center, assistance with bid administration, and construction administration services as detailed in the attached proposal dated January 17, 2024 (Proposal)**.

Owner and Engineer further agree as follows:

## 1.01 Services of Engineer

- A. Engineer shall provide or furnish the Services set forth in this Agreement, and any Additional Services authorized by Owner and consented to by Engineer.

## 2.01 Owner's Responsibilities

- A. Owner shall provide Engineer with existing Project-related information and data in Owner's possession and needed by Engineer for performance of Engineer's Services. Owner will advise the Engineer of Project-related information and data known to Owner but not in Owner's possession. Engineer may use and rely upon Owner-furnished information and data in performing its Services, subject to any express limitations applicable to the furnished items.
  - 1. Following Engineer's assessment of initially-available Project information and data, and upon Engineer's request, Owner shall obtain, furnish, or otherwise make available (if necessary through retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Services; or, with consent of Engineer, Owner may authorize the Engineer to obtain or provide all or part of such additional information and data as Additional Services.
- B. Owner shall provide necessary direction and make decisions, including prompt review of Engineer's submittals, and carry out its other responsibilities in a timely manner so as not to delay Engineer's performance. Owner shall give prompt notice to Engineer whenever Owner observes or otherwise becomes aware of (1) any relevant, material defect or nonconformance in Engineer's Services, or (2) any development that affects the scope or time of performance of Engineer's Services.

## 3.01 Schedule for Rendering Services

- A. Engineer shall complete its Services per the schedule detailed in the Proposal.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's Services is impaired, or Engineer's Services are delayed or suspended, then the time for completion of Engineer's Services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

#### 4.01 Invoices and Payments

- A. Invoices: Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.
- B. Payment: As compensation for Engineer providing or furnishing Services and Additional Services, Owner shall pay Engineer as set forth in this Paragraph 4.01, Invoices and Payments. If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion.
- C. Failure to Pay: If Owner fails to make any payment due Engineer for Services, Additional Services, and expenses within 30 days after receipt of Engineer's invoice, then (1) the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; (2) in addition Engineer may, after giving 7 days' written notice to Owner, suspend Services under this Agreement until Engineer has been paid in full all amounts due for Services, Additional Services, expenses, and other related charges, and in such case Owner waives any and all claims against Engineer for any such suspension; and (3) if any payment due Engineer remains unpaid after 90 days, Engineer may terminate the Agreement for cause pursuant to Paragraph 5.01.A.2.
- D. Reimbursable Expenses: Engineer is entitled to reimbursement of expenses as detailed in the Proposal.
- E. Basis of Payment
- F. Owner shall pay Engineer for Services as follows:

##### **Fee Schedule**

Task 1 – Evaluation:	\$4,430 Lump Sum
Task 2 – Plan and Contract Development:	\$11,425 Lump Sum
Task 3 – Bidding:	\$3,000 T&M NTE @ \$143 per hour
Task 4 – Construction Admin:	\$6,000 T&M NTE @ \$143 per hour
Reimbursable Expenses (CAD and Printing):	\$1,000

- G. Additional Services: For Additional Services, Owner shall pay Engineer an amount equal to the cumulative hours charged in providing the Additional Services, times the standard hourly rate of \$143 per hour; plus reimbursement of expenses incurred in connection with providing the Additional Services, or as otherwise agreed upon.

## 5.01 Termination

### A. Termination for Cause

1. Either party may terminate the Agreement for cause upon 30 days' written notice in the event of substantial failure by the other party to perform in accordance with the terms of the Agreement, through no fault of the terminating party.
  - a. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 5.01.A.1 if the party receiving such notice begins, within 7 days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30-day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein will extend up to, but in no case more than, 60 days after the date of receipt of the notice.
2. In addition to its termination rights in Paragraph 5.01.A.1, Engineer may terminate this Agreement for cause upon 7 days' written notice (a) if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional, (b) if Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, (c) if payment due Engineer remains unpaid for 90 days, as set forth in Paragraph 4.01.C, or (d) as the result of the presence at the Site of undisclosed Constituents of Concern as set forth in Paragraph 6.01.I.
3. Engineer will have no liability to Owner on account of any termination by Engineer for cause.

B. Termination for Convenience: Owner may terminate this Agreement for convenience, effective upon Engineer's receipt of notice from Owner.

C. Payments Upon Termination: In the event of any termination under Paragraph 5.01, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement, and to reimbursement of expenses incurred through the effective date of termination. Upon making such payment, Owner will have the limited right to the use of all deliverable documents, whether completed or under preparation, subject to the provisions of Paragraph 6.01.F, at Owner's sole risk.

1. If Owner has terminated the Agreement for cause and disputes Engineer's entitlement to compensation for services and reimbursement of expenses, then Engineer's entitlement to payment and Owner's rights to the use of the deliverable documents will be resolved in accordance with the dispute resolution provisions of this Agreement or as otherwise agreed in writing.
2. If Owner has terminated the Agreement for convenience, or if Engineer has terminated the Agreement for cause, then Engineer will be entitled, in addition to the payments identified above, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's subcontractors or subconsultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Paragraph 4.01.F.

## 6.01 General Considerations

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer. Subject to the foregoing standard of care, Engineer may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor will Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a Constructor to comply with laws and regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- C. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform its work.
- D. Engineer's opinions of probable construction cost (if any) are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of probable construction cost prepared by Engineer. If Owner requires greater assurance as to probable construction cost, then Owner agrees to obtain an independent cost estimate.
- E. Engineer shall not be responsible for any decision made regarding the construction contract requirements, or any application, interpretation, clarification, or modification of the construction contract documents, other than those made by Engineer.
- F. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Engineer grants to Owner a limited license to use the deliverable documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all Services and Additional Services relating to preparation of the deliverable documents, and subject to the following limitations:
  - 1. Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer;
  - 2. any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific

purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and subconsultants;

3. Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and subconsultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and
  4. such limited license to Owner shall not create any rights in third parties.
- G. Owner and Engineer agree to transmit, and accept, Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
  - H. Waiver of Damages; Limitation of Liability: To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's officers, directors, members, partners, agents, employees, subconsultants, and insurers, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$100,000 or the total amount of compensation received by Engineer, whichever is greater.
  - I. The parties acknowledge that Engineer's Services do not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an unknown or undisclosed Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of Services on the portion of the Project affected thereby until such portion of the Project is no longer affected, or terminate this Agreement for cause if it is not practical to continue providing Services.
  - J. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute will be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.
  - K. This Agreement is to be governed by the laws of the state in which the Project is located.
  - L. Engineer's Services do not include: (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission; (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances; (3) providing surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements; or (4) providing legal advice or representation.

## 7.01 Definitions

- A. Constructor—Any person or entity (not including the Engineer, its employees, agents, representatives, subcontractors, and subconsultants), performing or supporting construction activities relating to the Project, including but not limited to contractors, subcontractors, suppliers, Owner's work forces, utility companies, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
- B. Constituent of Concern—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), lead based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to laws and regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

## 8.01 Successors, Assigns, and Beneficiaries

### A. Successors and Assigns

- 1. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 8.01.A.2 the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- 2. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated 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.

- B. Beneficiaries: Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

## 9.01 Total Agreement

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

This Agreement is effective on the date of execution.

Owner:

City of Spanish Fort  
\_\_\_\_\_  
(name of organization)

By: \_\_\_\_\_  
(authorized individual's signature)

Date: \_\_\_\_\_  
(date signed)

Name: \_\_\_\_\_  
(typed or printed)

Title: \_\_\_\_\_  
(typed or printed)

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_

Designated Representative:

Name: \_\_\_\_\_  
(typed or printed)

Title: \_\_\_\_\_  
(typed or printed)

Address:

\_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Engineer:

Matthew Jones Engineering LLC  
\_\_\_\_\_  
(name of organization)

By: \_\_\_\_\_  
(authorized individual's signature)

Date: \_\_\_\_\_  
(date signed)

Name: S. Matthew Jones  
\_\_\_\_\_  
(typed or printed)

Title: Owner  
\_\_\_\_\_  
(typed or printed)

Address for giving notices:

9427 Wind Clan Trail  
\_\_\_\_\_  
Daphne, AL 36526  
\_\_\_\_\_

Designated Representative:

Name: N/A  
\_\_\_\_\_  
(typed or printed)

Title: \_\_\_\_\_  
(typed or printed)

Address:

\_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_