

## TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES

### STANDARD OF PERFORMANCE

The standard of care for all professional engineering, consulting and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by member's of the ENGINEER's profession practicing under the same or similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, expressed or implied, under this Agreement or otherwise, in conjunction with ENGINEER's services.

### INSURANCE

ENGINEER agrees to procure and maintain, at it's expense Worker's compensation insurance as required by Statute; Automobile Liability insurance; Commercial General Liability insurance; and, Professional Liability Insurance for claims arising out of the performance of services under this Agreement caused by negligent acts, errors, or omissions for which Engineer is legally liable. Upon request, CLIENT shall be made an additional insured on Commercial General and Automobile Liability insurance policies and certificates of insurance will be furnished to the CLIENT for the claims covered by the ENGINEER's insurance, subject to the limitation of liability contained in that Section as it appears within these terms and conditions.

### OPINONS OF PROBABLE COST (COST ESTIMATES)

Any opinions of probable project cost or probable construction cost provided by the ENGINEER are made on the basis of information available to the ENGINEER and on the basis of the ENGINEER's experience and qualifications, and represents its judgment as an experienced and qualified professional engineer. However, since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s)' means and methods of determining prices, or over competitive bidding or market conditions, ENGINEER does not guarantee that proposals, bids or actual project or construction cost will not vary from opinions of probable cost ENGINEER prepares.

### CONSTRUCTION PROCEDURES

ENGINEER's observation or monitoring portions of the work performed under construction contracts shall not relieve the contractor from its responsibility for performing the work in accordance with applicable contract documents. ENGINEER shall not control or have charge of, and shall not be responsible for, construction means, methods, techniques, sequences, procedures of construction, health or safety programs or precautions contained with the work and shall not manage, supervise, control or have charge of construction. Further, ENGINEER shall not be responsible for the acts or omissions of the contractor or other parties on the project.

### CONTROLLING LAW

This Agreement is to be governed by the law of the state where the ENGINEER's services are performed.

### SERVICES AND INFORMATION

CLIENT will provide all criteria and information pertaining to CLIENT's requirements for the project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations. CLIENT will also provide copies of any CLIENT-furnished Standard Details, Standard Specifications, or

Standard Bidding Documents which are to be incorporated into the project.

CLIENT will furnish the services of soils/geotechnical engineers or other consultants that include reports and appropriate professional recommendations when such services are deemed necessary by the ENGINEER. The CLIENT agrees to bear full responsibility for the technical accuracy and content of CLIENT-furnished documents and services.

In performing professional engineering and related services hereunder, it is understood by CLIENT that ENGINEER is not engaged in rendering any type of legal, insurance or accounting services, opinions or advice. Further, it is the CLIENT's sole responsibility to obtain the advices of an attorney, insurance counselor or accountant to protect the CLIENT's legal and financial interests. To that end, the CLIENT agrees that CLIENT or the CLIENT's representative will examine all studies, reports, sketches, drawings, specifications, proposals and other documents, opinions or advice prepared or provided by the ENGINEER, and will obtain the advice of an attorney, insurance counselor or other consultant as the CLIENT deems necessary to protect the CLIENT's interests before CLIENT takes action or forebears to take action based upon or relying upon the services provided by the ENGINEER.

### SUCCESSORS AND ASSIGNS

CLIENT and ENGINEER, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the covenants of this Agreement. Neither CLIENT nor ENGINEER will assign, sublet or transfer any interest in this Agreement without the written consent of the other.

### RE-USE OF DOCUMENTS

CLIENT or ENGINEER may terminate the Agreement, in whole or in part, by giving seven (7) days written notice, if the other party substantially fails to fulfill its obligations under the Agreement through no fault of the terminating party. Where the method of payment is "lump sum", or cost reimbursement, the final invoice will include all services and expenses associated with the project up to the effective date of termination. An equitable adjustment shall also be made to provide for termination settlement costs ENGINEER incurs as a result of commitments that had become firm before termination, and for reasonable profit for services performed.

### SEVERABILITY

If any provision of this Agreement is held invalid or unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term of condition shall not be construed by the other party as a waiver of any subsequent breach of the same provision, term or condition.

### INVOICES

ENGINEER will submit monthly or more frequent as appropriate invoices for services rendered and CLIENT will make prompt payments upon receipt in response to the ENGINEER's invoices. Labor expense will be charged in accordance with proposed rates and terms. Material and subcontractor expenses will be marked up 15% to cover administrative and insurance costs.

CLIENT shall make prompt payment to ENGINEER regardless of any other agreements or arrangements with Owner. ENGINEER's compensation shall not be tied to CLIENT's receipt of payment by the Owner.

ENGINEER will retain receipts for reimbursable expenses in general accordance with the Internal Revenue Service rules pertaining to the support of expenditures for income tax purposes. Receipts will be available for inspection by CLIENT's auditors upon request.

If CLIENT disputes any items in ENGINEER's invoice for any reason, including the lack of supporting documentation, CLIENT may temporarily delete the disputed item and pay the remaining amount of the invoice. CLIENT will promptly notify ENGINEER of the dispute and request clarification and/or correction. After any dispute has been settled, ENGINEER will include the disputed item on a subsequent, regularly scheduled invoice, or on a special invoice for the disputed item only.

CLIENT recognizes that late payment of invoices results in extra expenses for the ENGINEER. ENGINEER retains the right to assess CLIENT interest at the rate of one percent (1%) per month, but not to exceed the maximum rate allowed by law, on invoices which are not paid within forty-five (45) days from the date of the invoice. In the event undisputed portions of the ENGINEER's invoices are not paid when due, ENGINEER also reserves the right, after seven (7) days prior written notice, to suspend the performance of its services under this Agreement until all past due amounts have been paid in full.

#### **CHANGES**

The parties agree that no change or modification to this Agreement, or any attachments hereto, shall have any force or effect unless the change is reduced to writing, dated, and made part of this Agreement. Adjustments in the period of services and in compensation shall be in accordance with applicable paragraphs and sections of this Agreement. Any proposed fees by ENGINEER are estimates to perform the services required to complete the project as ENGINEER understands it to be defined. For those projects involving conceptual or process development services, activities often are not fully definable in the initial planning. In any event, as the project progresses, the facts developed may dictate a change in the services to be performed, which may alter the scope. ENGINEER will inform CLIENT of such situations so that changes in scope and adjustments to time of performance and compensation can be made as required. If such change, additional services, or suspension of services results in an increase or decrease in the cost of or time required for the performance of the services, and equitable adjustment shall be made, and the Agreement modified accordingly.

#### **CONTROLLING AGREEMENT**

These Terms and Conditions shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice-to-proceed, or like document.

#### **HAZARDOUS MATERIALS**

CLIENT represents to ENGINEER that, to the best of its knowledge, no hazardous materials are present at the project site. However, in the event hazardous materials are known to be present, CLIENT represents that to the best of its knowledge it has disclosed to ENGINEER the existence of all such hazardous materials, including but not limited to asbestos, PCB's, petroleum, hazardous waste, or radioactive material located at or near the project site, including type, quantity and location of such hazardous materials. In the event ENGINEER or any other party encounters undisclosed hazardous materials, ENGINEER shall have the obligation to notify CLIENT and, to the extent required by law or regulation, the appropriate government officials, and ENGINEER may, at its option and without liability for consequential or any other damages to CLIENT, suspend performance of services on that portion of the project affected by hazardous materials until

CLIENT: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the hazardous materials; and (ii) warrants that the project site is in full compliance with all applicable laws and regulations. CLIENT acknowledges that ENGINEER is performing professional services for CLIENT and that ENGINEER is not and shall not be required to become and "arranger," "operator," "generator," or "transporter" of hazardous materials, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the project site in connection with the ENGINEER's services under this Agreement. If ENGINEER's services hereunder cannot be performed because of the existence of hazardous materials, ENGINEER shall be entitled to terminate this Agreement for cause on 30 days written notice. To the fullest extent permitted by law, CLIENT shall indemnify and hold harmless ENGINEER, its officers, directors, partners, employees, and sub consultants from and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, CLIENTs, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from hazardous materials, provided that (i) any such cost, loss or damage is attributable to bodily injury, sickness, disease, or death, or injury to or destruction of tangible property (other than completed Work), including the loss of use resulting therefrom, and (ii) nothing in this paragraph shall obligate CLIENT to indemnify any individual or entity from and against the consequences of that individual's or entity's sole negligence or willful misconduct.

#### **EXECUTION**

This Agreement, including the exhibits and schedules made a part thereof, constitute the entire Agreement between ENGINEER and CLIENT, supersedes and controls over all prior written or oral understandings. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by the parties.

#### **LIMITATION OF LIABILITY**

ENGINEER's total liability to CLIENT for any loss or damage, including but not limited to special and consequential damages arising out of or in conjunction with the performance of services or any other cause, including ENGINEER's professional negligent acts, errors, or omissions, shall not exceed if applicable the ENGINEER's compensation for reports or opinions, or otherwise the lessor of \$50,000 or the total compensation received by ENGINEER hereunder, except as otherwise provided under this Agreement, and CLIENT hereby releases and holds harmless ENGINEER from any liability above such amount.