

CONSULTING AGREEMENT STANDARD TERMS AND CONDITIONS

The following Standard Terms and Conditions, together with the attached scope of services constitute the terms of the Agreement between _____ ("Consultant") and _____ ("Client") with respect to the performance of all services provided on the project described in said scope of services (the "Project").

1. SCOPE OF SERVICES

Consultant, as representative of the Client, shall perform the consulting services described in the attached proposal. The services shall be performed in a manner consistent with that degree of skill and care ordinarily exercised by similarly situated members of Consultant's profession practicing in a similar location and under the same or similar circumstances at the time the services were performed. Consultant makes no warranties or other representations as to the standard of performance hereunder.

2. CLIENT RESPONSIBILITIES

Client shall do the following in a timely manner so as not to delay the services of Consultant:

- 2.1 Designate in writing a person to act as Client's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define Client's policies and decisions with respect to Consultant's services for the Project.
- 2.2 Give prompt written notice to Consultant whenever Client observes or otherwise becomes aware of any development that affects the scope or timing of Consultant's services.
- 2.3 Assist Consultant by placing at Consultant's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
- 2.4 Furnish to Consultant, as required for performance of Consultant's Basic Services, the following:
 - 2.4.1 data prepared by or services of others, including without limitation borings, probing's and subsurface explorations, hydrographic surveys, laboratory

tests and inspections of samples, materials and equipment.

2.4.2 appropriate professional interpretations of all of the foregoing;

2.4.3 environmental assessment and impact statements;

2.4.4 property, boundary, easement, right-of-way, topographic and utility surveys;

2.4.5 property descriptions;

2.4.6 zoning, deed and other land use restriction; and

2.4.7 other special data or consultations,

all of which Consultant shall be entitled to use and rely upon with respect to the accuracy and completeness thereof, in performing services under this Agreement.

- 2.5 Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by Consultant; obtain advice of an attorney, insurance counselor and other consultants as Client deems appropriate for such examination; and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of Consultant.
- 2.6 Secure and maintain all necessary approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
- 2.7 Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, and such legal services as Client may require or Consultant may reasonably request with regard to legal issues pertaining to the Project.
- 2.8 Where the Services include subsurface explorations, the Client acknowledges that the use of exploration equipment may alter or damage the terrain, vegetation, structures, improvements, or property at the Site and Client accepts that risk. Provided the Consultant uses reasonable care, the Consultant shall not be liable for such alteration or damage or for damage to, or interference with any subterranean structure, pipe, tank, cable, or other element or condition whose nature and location are not called to the Consultant's attention in writing before exploration commences.

3. ENGAGEMENT OF LABORATORIES AND OTHERS/SAMPLES

3.1 If so requested or agreed by the Client, the Consultant will recommend the Client's engaging the services of laboratories, testing services, sub consultants, or third-parties to perform suitable aspects of the Services. Invoices for such third parties will be reviewed by the Consultant, and the Consultant will make recommendations to the Client regarding payment. Payment to these third parties will be made directly by the client. The Consultant will recommend the use of such third-parties with reasonable care but does not guarantee their services and will not be liable for their errors or omissions.

3.2 Consultant will dispose of all soil, rock, water and other samples thirty (30) days after submission of Consultant's report or other deliverable. Client may request, in writing, that any such samples be retained beyond such date, and in such case Consultant will ship such samples to the location designated by Client, at Client's expense.

3.3 In the event that samples collected by Consultant or provided by Client or wastes generated as a result of the Project contain or potentially contain substances which are or may be hazardous or detrimental to health, safety or the environment as defined by federal, state or local statutes, regulations or ordinances ("Hazardous Materials"), said Hazardous Materials shall remain the property of Client and Client shall have responsibility for them as generator.

4. BILLING AND PAYMENT

4.1 The Client shall pay Consultant in accordance with the rates and charges set forth in this Agreement. Consultant will submit biweekly to the Client an invoice of services rendered and expenses incurred during the previous period.

4.2 Payment will be due upon receipt of Consultant's invoice. Payments due Consultant and unpaid under the terms of this Agreement shall bear interest from thirty (3.0) days after the date payment is due at the rate of one and one half (1.5%) percent per month (18 percent per annum), or the maximum rate allowed by law at the principal place of business of Consultant, whichever is less. In the event that Consultant is compelled to take action to collect overdue payments, the Client will reimburse Consultant for all cost and expenses of collection, including without limitation all court costs and reasonable attorney's fees.

4.3 Reimbursable Expenses include actual expenditures made by Consultant for:

4.3.1 transportation and living expenses incurred in connection with travel on behalf of the Client;

4.3.2 long distance communications, including but not limited to data communications and facsimile transmissions;

4.3.3 fees paid for securing approval of authorities having jurisdiction over the project;

4.3.4 reproductions;

4.3.5 postage and handling of documents;

4.3.6 renderings and models requested by the Client;

4.3.7 expense of overtime work requiring higher than regular rates;

4.3.8 expense of any additional insurance coverage or limits, including professional liability insurance, requested by the Client in excess of that normally carried by Consultant and Consultant's consultants;

4.4 If Consultant provides or performs soil or material testing, surveying or other ancillary services, the Client will be charged for these services as follows:

4.5 If the Client fails to make payment when due Consultant for services and reimbursable expenses, Consultant may, upon seven days' written notice to Client suspend performance of services under this Agreement. Unless payment in full is received by Consultant within seven days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, Consultant shall have no liability to Client for delay or damage caused Client or others because of such suspension of services.

5. OWNERSHIP AND USE OF DOCUMENTS

5.1 Drawings, diagrams, plans, specifications, calculations, reports, processes-computer processes and software, operational and design data, and all other documents and information produced in connection with the project

as instruments of service, regardless of form, shall be confidential and the proprietary information of Consultant, and shall remain the sole and exclusive property of Consultant whether the project for which they are made is executed or not. The Client shall not have or acquire any title to or ownership rights in any of the documents or information prepared by Consultant. The Client shall be permitted to retain printed copies of such documents or information for information and Reference only in connection with the Client's use and occupancy of the project. The documents and/or information shall not be used or reused by the Client or others on other projects, for additions to this project, or for completion of this project by others, provided Consultant is not in default under this Agreement, except with the express written consent of Consultant and with appropriate compensation to Consultant. The Client shall inform each of its officers and employees who receive such documents or information of the above mentioned restrictions, and shall endeavor to assure conformity to such restrictions.

- 5.2 Submission or distribution to meet official regulatory requirements or for other purposes in connection with the project is not to be construed as publication in derogation of Consultant rights under this section.

6. LIMITATIONS OF LIABILITY AND REMEDIES

- 6.1 To the fullest extent permitted by law, the total liability, in the aggregate, of Consultant and consultant's officers, directors, employees, agents, and independent professional associates and consultants, and any of them, to Client and anyone claiming by, through or under Client, for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to Consultant's services, the Project or this Agreement, from any cause or causes whatsoever, including but not limited to, the negligence, errors, omissions, strict liability, breach of contract, breach of warranty of Consultant or Consultant's officers, directors, employees, agents or independent professional associates or consultants, or any of them, shall not exceed the total compensation received by Consultant under this Agreement, or the total amount of \$25,000, whichever is greater.
- 6.2 The parties hereby waive all rights to recovery of consequential damages, including but not limited to damages for loss of profits, loss of revenues and loss of business opportunities, for claims, disputes or other matters in question arising out of or relating to this Agreement and the services provided hereunder.
- 6.3 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than the date when the services provided hereunder are substantially complete.

7. SUBSURFACE RISKS [if applicable]

Client recognizes that special risks occur whenever consulting or related disciplines are applied to identify subsurface conditions. Even a comprehensive sampling and testing program, implemented with appropriate equipment and experience to personnel under the direction of a trained professional who functions in accordance with a professional standard of practice may fail to detect certain hidden conditions. For similar reasons, actual environmental geological, geotechnical conditions that the Consultant properly inferred to exist between sampling points may differ significantly from those that actually exists. The passage of time also must be considered, and the Client recognizes that due to natural occurrences or direct or indirect human intervention at the Site or distance from it, actual conditions may quickly change. The Client realizes that nothing can be done to eliminate these risks altogether, but certain techniques can be applied to help reduce them to a level that may be tolerable to the Client. The Consultant is available to explain these risks and risk reduction methods to the Client but, in any event, the Services included in this Agreement are those which the Client agreed to or selected in light of his/her own risk preferences and other considerations.

8. CONSTRUCTION PHASE SERVICES [if applicable]

- 8.1 If Consultant's services include the performance of any services during the construction phase of the project, it is understood that the purpose of any such services (including any visits to the site) will be to enable Consultant to better perform the duties and responsibilities assigned to and undertaken by it as an experienced and qualified design professional, and to provide the Client with a greater degree of confidence that the completed work of the Contractor(s) will conform generally to the Contract Documents. Consultant shall not, during such visits or as a result of any observations of construction, supervise, direct or have control over Contractor's(s') work nor shall Consultant have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by the Contractor(s) or safety precautions and programs incidental to the work of Contractor(s) or for any failure of Contractor(s) to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor furnishing and performing its (their) work. Consultant does not guarantee the performance of the construction contract by the Contractor(s), and does not assume responsibility for Contractor's failure to furnish and perform its (their) work in accordance with the Contract Documents.

8.2 If Consultant's contract with the client so requires, Consultant shall review (or take other appropriate action in respect of) Shop Drawings, samples and other data which Contractor(s) is (are) required to submit, but only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents. Such review of other actions shall not extend to means, methods, techniques, sequences or procedures of manufacture (including the design of manufactured products) or construction, or to safety precautions and programs incident thereto. Consultant's review or other actions, as described above shall not constitute approval or an assembly or product of which an item is a component, nor shall it relieve the Contractor(s) of (a) its (their) obligations regarding review and approval of any such submittals; and (b) its (their) exclusive responsibility for the means, methods, sequences, techniques and procedures of construction, including safety of construction.

8.3 Client shall require that, to the fullest extent permitted by law, the Contractor(s) defend, indemnify and hold Consultant harmless from and against all claims, losses, liabilities and damages caused in whole or in part by the performance of the Contractor(s) work on the Project. Client shall require that the Contractor(s)' general liability policies name the Consultant as an additional insured.

9. MISCELLANEOUS

9.1 This Agreement shall be governed and construed in accordance with the laws of the State of the principal place of business of Consultant. Any litigation arising out of this Agreement or the services provided hereunder shall be filed in State Court in the County in which Consultant's principal place of business is located.

9.2 Prior to the initiation of any legal proceedings, the parties agree to submit all claims, disputes or controversies arising out of or in relation to the interpretation, application or enforcement of this Agreement to non-binding mediation. Mediation shall be conducted under the auspices of the American Arbitration Association or such other mediation service or mediator upon which the parties agree. The party seeking to initiate mediation shall do so by submitting a formal written request to the other party to this Agreement. This Article shall survive completion or termination of this Agreement, but under no circumstances shall either party call for mediation of any claim or dispute arising out of this Agreement after such period of time as would normally bar the initiation of legal proceedings to litigate such a claim or dispute under the applicable law.

- 9.3 Section headings in this Agreement are included herein for convenience of reference only, and shall not constitute a part of the Agreement or for any other purpose.
- 9.4 The Client and Consultant respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such party with respect to all covenants of this Agreement. Neither the Client nor Consultant shall assign, sublet or transfer any interest in this Agreement without the written consent of the other.
- 9.5 This Agreement represents the entire and integrated Agreement between the Client and Consultant and supersedes all prior negotiations, representations or agreements, either written or oral, and may be amended only by written instruments signed by both Client and Consultant.
- 9.6 The Client and Consultant waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, but only to the extent covered by any property or other insurance. The Client and Consultant shall each require similar waivers from their contractors, consultants and agents.
- 9.7 The proposed language of any certificates, affidavits or certifications requested of Consultant shall be submitted to Consultant for review and approval at least fourteen days prior to execution. The Client shall not request certification and/or affidavits that would require knowledge or services beyond the scope of this Agreement or beyond the professional qualifications and consulting experience of Consultant.
- 9.8 Any estimates or opinions of project or construction costs are provided by Consultant on the basis of Consultant's experience and qualifications as a consultant and represents its best judgment as an experienced and qualified consultant familiar with the construction industry. Since Consultant has no control over the cost of labor, materials, equipment or services furnished by others or over competitive bidding or market conditions, it cannot guarantee that proposals, bids or actual project costs or construction costs will not vary from any estimates or opinions of costs prepared by Consultant. Similarly, since Consultant has no control over building operation and/or maintenance costs, Consultant cannot and does not guarantee that the actual building was system operating or maintenance costs will not vary from any estimates given by Consultant.
- 9.9 Consultant shall prepare any reports or other deliverables (collectively, the "Deliverables") for the exclusive use of Client in accordance with the professional and industry standards prevailing at the time such services

were rendered. The Deliverables contain information that is time sensitive and shall be prepared subject to the particular scope limitations, budgetary and time constraints and business objectives of the Client. As a condition precedent to the Client's release of the Deliverables to a third party, Client shall require that the third party agree to be bound by the terms and conditions set forth herein. In no event may a third party use or rely upon the Deliverables if it does not agree to be bound by these terms and conditions.

SAMPLE