

CLIENT: \_\_\_\_\_

ENGINEER/CONSULTANT: \_\_\_\_\_

### ENGINEER/CONSULTANT CONTRACT PROVISIONS

1. **CONTRACT** – These Contract Provisions and the accompanying Proposal constitute the full and complete Agreement between the parties and may be changed, amended, added to, superseded, or waived only if both parties specifically agree in writing to such amendment of the Agreement. In the event of any inconsistency between these Contract Provisions and any proposal, contract, purchase order, requisition, notice to proceed, or like document, these Contract Provisions shall govern.

2. **SCOPE OF SERVICES** – \_\_\_\_\_

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3. **PAYMENT TERMS** – \_\_\_\_\_

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4. **RIGHT OF ENTRY** – When entry to property is required for the ENGINEER/CONSULTANT to perform its services, the Client agrees to obtain legal right-of-entry on the property.

5. **DOCUMENTS** – All reports, notes, drawings, specifications, data, calculations, and other documents, including those in electronic form, prepared by ENGINEER/CONSULTANT are instruments of ENGINEER's/CONSULTANT's service that shall remain ENGINEER's/CONSULTANT's property. The Client agrees not to use ENGINEER/CONSULTANT-generated documents for marketing purposes, for projects other than the project for which the documents were prepared by ENGINEER/CONSULTANT, or for future modifications to this project, without ENGINEER's/CONSULTANT's express written permission. Any reuse or distribution to third parties without such express written permission or project-specific adaptation by ENGINEER/CONSULTANT will be at the Client's sole risk and without liability to ENGINEER/CONSULTANT or its employees, subsidiaries, independent professional associates, subconsultants, and subcontractors. Client shall, to the fullest extent permitted by law, defend, indemnify, and hold harmless ENGINEER/CONSULTANT from and against any and all costs, expenses, fees, losses, claims, demands, liabilities, suits, actions, and damages whatsoever arising out of or resulting from such unauthorized reuse or distribution.

**6. DISPOSAL OF SAMPLES** –ENGINEER/CONSULTANT will discard samples upon completion of the work covered under this Agreement, unless the Client instructs otherwise in writing.

**7. HAZARDOUS MATERIALS** – The scope of ENGINEER's/CONSULTANT's services for this Agreement does not include any responsibility for detection, remediation, accidental release, or services relating to waste, oil, asbestos, lead, or other hazardous materials, as defined by Federal, State, and local laws or regulations.

**8. CONSTRUCTION PHASE SERVICES** – If ENGINEER/CONSULTANT performs any services during the construction phase of the project, ENGINEER/CONSULTANT shall not supervise, direct, or have control over Contractor's work. ENGINEER/CONSULTANT shall not have authority over or responsibility for the construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the work of the Contractor. ENGINEER/CONSULTANT does not guarantee the performance of the construction contract by the Contractor and does not assume responsibility for the Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

**9. STANDARD OF CARE** – ENGINEER/CONSULTANT and its employees, subsidiaries, independent professional associates, subconsultants, and subcontractors will exercise that degree of care and skill ordinarily practiced under similar circumstances by design professionals providing similar services. Client agrees that services provided will be rendered without any warranty, express or implied. ENGINEER/CONSULTANT shall exercise usual and customary professional care in its efforts to comply with applicable codes, regulations, laws rules, ordinances, and such other requirements in effect as of the date of execution of this Agreement.

**10. OPINION OF PROBABLE COSTS** – When required as part of its work, ENGINEER/CONSULTANT will furnish opinions of probable cost, but does not guarantee the accuracy of such estimates. Opinions of probable cost, financial evaluations, feasibility studies, economic analyses of alternate solutions, and utilitarian considerations of operations and maintenance costs prepared by ENGINEER/CONSULTANT hereunder will be made on the basis of ENGINEER's/CONSULTANT's experience and qualifications and will represent ENGINEER's/CONSULTANT's judgment as an experienced and qualified design professional. However, users of the probable cost opinions must recognize that ENGINEER/CONSULTANT does not have control over the cost of labor, material, equipment, or services furnished by others or over market conditions or contractors' methods of determining prices or performing the work.

**11. SUSPENSION OF WORK** – The Client may, at any time, by written notice, suspend further work by ENGINEER/CONSULTANT. The Client shall remain liable for, and shall promptly pay ENGINEER/CONSULTANT for all services rendered to the date of suspension of services, plus suspension charges, which shall include the cost of assembling documents, personnel and equipment, rescheduling or reassignment, and commitments made to others on Client's behalf. Client shall pay ENGINEER/CONSULTANT pursuant to the rates and charges set forth in the Proposal. ENGINEER/CONSULTANT will submit monthly invoices to Client for services rendered and expenses incurred. If Client does not pay invoices within thirty (30) days of submission of invoice, ENGINEER/CONSULTANT may, upon written notice to the Client, suspend further work until payments are brought current. The Client agrees to indemnify and hold ENGINEER/CONSULTANT harmless from any claim or liability resulting from such suspension.

**12. CHANGES OR DELAYS** – Unless the accompanying Proposal provides otherwise, the proposed fees constitute ENGINEER's/CONSULTANT's estimate to perform the services required to complete the Project. Required services often are not fully definable in the initial planning; accordingly, developments may dictate a change in the scope of services to be performed. Where this occurs, changes in the Agreement shall be negotiated and an equitable adjustment shall be made. Costs and schedule commitments shall be subject to renegotiation for unreasonable delays caused by the Client's failure to provide specified facilities, direction, or information, or if ENGINEER's/CONSULTANT's failure to perform is due to any act of God, labor trouble, fire, inclement weather, act of governmental authority, failure of transportation, accident, power failure, or interruption or any other cause beyond the reasonable control of ENGINEER/CONSULTANT. Temporary work stoppage caused by any of the above may result in additional cost beyond that outlined in the accompanying Proposal.

**13. LIABILITY** – To the fullest extent permitted by law, the total liability, in the aggregate, of ENGINEER/CONSULTANT and ENGINEER's/CONSULTANT's officers, directors, employees, agents, and consultants 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 ENGINEER's/CONSULTANT's services, the Project or this Agreement, from any cause or causes whatsoever, including but not limited to, negligence, strict liability, breach of contract or breach of warranty shall not exceed the total compensation received by ENGINEER/CONSULTANT under this Agreement, or the total amount of \$\_\_\_\_\_, whichever is greater.

**14. CONFLICTS OF INTEREST** – This assignment may involve parties with adverse interests to clients with whom ENGINEER/CONSULTANT has current or past relationships. It is ENGINEER/CONSULTANT policy to make reasonable attempts to identify such relationships prior to acceptance of a professional assignment, but ENGINEER/CONSULTANT cannot assure that conflicts or perceived conflicts will not arise, and ENGINEER/CONSULTANT does not accept responsibility for such occurrences.

**15. REIMBURSABLE EXPENSES** – ENGINEER/CONSULTANT will bill direct non-payroll expenses at cost plus 10%. Direct expenses include all reasonable expenses resulting from required responses to subpoenas or court orders related to work under the Contract.

#### **16. MISCELLANEOUS**

**Governing Law:** The laws of the state in which the ENGINEER/CONSULTANT office executing this Agreement is located shall govern the validity and interpretation of this Agreement.

**Invalid Terms:** In the event any of these Contract Provisions are found to be illegal or otherwise unenforceable, the unenforceable Contract Provision will be stricken. Striking such a Contract Provision shall have no effect on the enforceability of the remaining Contract Provisions and those remaining Contract Provisions shall continue in full force and effect as if the unenforceable Contract Provision were never included in the Agreement.

**Mediation:** The Client and ENGINEER/CONSULTANT agree to submit all claims and disputes arising out of this Agreement to non-binding mediation prior to the initiation of legal proceedings. This provision shall survive completion or termination of this Agreement; however, neither party shall seek mediation of any claim or dispute arising out of this Agreement beyond the period of time that would bar the initiation of legal

proceedings to litigate such claim or dispute under the applicable law.

**CONSULTANT Reliance:** ENGINEER/CONSULTANT shall be entitled to rely, without liability, on the accuracy and completeness of any and all information provided by Client, Client's consultants and contractors, and information from public records, without the need for independent verification.

**Certifications:** ENGINEER/CONSULTANT shall not be required to sign any documents, no matter by whom requested, that would result in ENGINEER's/CONSULTANT's having to certify, guaranty, or warrant the existence of conditions that ENGINEER/CONSULTANT cannot ascertain.

**Third Parties:** Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Client or ENGINEER/CONSULTANT. ENGINEER's/CONSULTANT's services hereunder are being performed solely for the benefit of the Client, and no other entity shall have any claim against ENGINEER/CONSULTANT because of this Agreement or ENGINEER's/CONSULTANT's performance of services hereunder.

**Consequential Damages:** Neither the Client nor the ENGINEER/CONSULTANT shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of, or connected in any way to the Project or this Agreement. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, loss of reputation, unrealized savings or diminution of property value and shall apply to any cause of action including negligence, strict liability, breach of contract and breach of warranty.

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Client Authorized Representative Name (Please Print)

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Client Authorized Representative Signature

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Date

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Engineer/Consultant Authorized Representative Name (Please Print)

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Engineer/Consultant Authorized Representative Signature

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Date

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