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Document 108

Contract between Engineer and Contractor

Contractor(Client):

Contact:

Address:

City, State, Zip:

Phone:

Project:

Address:

Address:

City, State, Zip:

Engineer:

Contact:

Address:

City, State, Zip:

Phone:

Owner:

Contact:

Address:

City, State, Zip:

Phone:

TERMS AND CONDITIONS

1. SERVICES TO BE PROVIDED. ENGINEER

_____ is an independent contractor who agrees to provide the Services to CONTRACTOR for its sole benefit and exclusive use. There are no third party beneficiaries to this Agreement except as permitted by ENGINEER in writing.

2. DEFINITIONS. These terms will have the following meanings when used in this Agreement

- a. Claims - All actions, suits, arbitrations, administrative proceedings, demands and claims for any and all damages, injunctive or equitable relief, including reasonable attorneys' and experts' fees, including those attributable to bodily injury (including death), personal injury and property damage.
- b. Contaminants - Asbestos, fungal, bacterial, viral or any other hazardous or toxic substances, pollutants and constituents.
- c. Environmental Health and Safety Claims - All Claims related to or arising out of exposure to or release of Contaminants at or from the Site, before, during or after performance of the Services.
- d. Environmental Liabilities - All Liabilities related to or arising out of any and all Environmental Health and Safety Claims.
- e. Indemnities: ENGINEER its parent, subsidiaries, affiliates and subcontractors, including their respective officers, directors, employees, partners, agents, successors and assigns.
- f. Liabilities - All liabilities, damages, losses, costs, expenses, settlements, judgments, awards, and governmental penalties and sanctions, including reasonable attorneys' and experts' fees, including those attributable to bodily injury (including death), personal injury and property damage.
- g. Materials- Used storage tanks or any associated equipment, contaminated soils or materials.
- h. Orders - Any orders or other form writings issued or signed by the parties, such as purchase orders or work orders.
- i. Samples - Specimens or representative pieces, segments or the like and/or the residue therefrom.
- j. Services - The consulting services set forth in the attached Scope of Authorized Work.
- k. Use or Used - Any distribution, publication, use or reuse of Work Product.
- l. Wastes - Surpluses, by-products, residues and the like and/or fluids produced by the Services.
- m. Work Product - All documents, whether a work-in-progress or final and paid for or not, including, but not limited to, analyses, drawings, specifications, reports and related documents generated by ENGINEER under this Agreement.

3. STANDARD OF CARE. ENGINEER will perform the Services using that degree of skill and care ordinarily exercised under similar circumstances by reputable members of ENGINEER'S profession practicing in the same or similar locality at the time of performance. NO OTHER WARRANTY, EXPRESS OR IMPLIED, IS MADE OR INTENDED AND THE SAME ARE SPECIFICALLY DISCLAIMED.

CLIENT shall not be entitled to assert a Claim against ENGINEER'S based on any theory of professional negligence or violation of the standard of care unless and until CLIENT has obtained the written opinion from a licensed, independent and reputable engineering and/or environmental professional, as appropriate for the Services in question, that ENGINEER has violated the standard of care applicable to ENGINEER'S performance of those Services under this Agreement. CLIENT shall promptly provide such independent opinion to ENGINEER'S and the parties shall agree in good faith to resolve the claim within 30 days. If ENGINEER fails to perform the Services in accordance with the applicable Standard of Care, CLIENT agrees that the damages for which ENGINEER shall be liable are limited to that proportion of such damages which is attributable to ENGINEER'S percentage of fault, subject to the limitations otherwise set forth in Sections 4 and 5 of this Agreement. In any event, any claims that CLIENT brings against ENGINEER with respect to the Services to be performed by ENGINEER must be commenced within one (1) year after the date of the report which ENGINEER issues with respect to those Services.

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Contract between Engineer and Contractor

4. LIMITATION OF LIABILITY. TIC INCLUSION OF A LIMITATION OF LIABILITY PROVISION IN THIS AGREEMENT SET FORTH BELOW IS A MATERIAL CONSIDERATION FOR ENGINEER'S WILLINGNESS TO PERFORM THE SERVICES TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND FOR ADDITIONAL CONSIDERATION OF \$10.00 FROM ENGINEER. ENGINEER HEREBY EXPRESSLY AGREES THAT THE LIABILITY OF , ITS PARENT, SUBSIDIARIES, AFFILIATES AND SUBCONTRACTORS, INCLUDING THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS, FOR A CAUSE OF ACTION WHATSOEVER, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, AND/OR ANY SERVICES PROVIDED AND WORK PRODUCT DEVELOPED PURSUANT TO THIS AGREEMENT, EXCEPT FOR THOSE CAUSES OF ACTION FOR BODILY INJURY (INCLUDING DEATH) AND/OR PROPERTY DAMAGE RESULTING FROM AN OCCURRENCE CAUSED BY THE PERFORMANCE OF ITS FIELD OPERATIONS, SHALL BE LIMITED TO THE AGGREGATE SUM, INCLUSIVE OF AMOUNTS PAID TO SECONDARY CLIENTS, IF ANY, TO WHOM WORK PRODUCT IS PROVIDED UNDER A SECONDARY CLIENT AGREEMENT, AND TO ANY OTHER THIRD PARTIES, INCLUDING ATTORNEYS' FEES AND ALL OTHER LITIGATION COSTS AND EXPENSES, THAT ENGINEER IS OBLIGATED TO PAY, OF \$50,000 OR THE TOTAL FEES PAID TO BY CLIENT UNDER THIS AGREEMENT, WHICHEVER IS GREATER. ALL THIRD PARTY BENEFICIARIES TO THIS AGREEMENT, IF ANY, ARE INTENDED TO BE AND HEREBY ARE BOUND BY THE TERMS OF THIS LIMITATION OF LIABILITY AND THE AGGREGATE LIMITATION OF LIABILITY CON

5. INDIRECT DAMAGES. NEITHER PARTY SHALL BE RESPONSIBLE TO THE OTHER OR TO ANY THIRD PARTY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, INCOME, PROFITS OR REPUTATION) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PERFORMANCE OF THE SERVICES PROVIDED HEREUNDER.

6. ARBITRATION. Any controversy or Claim arising out of this Agreement, or the breach thereof, shall be settled by binding arbitration by American Arbitration Association (AAA), or such other binding arbitration as mutually agreed to by the parties. AAA arbitration shall be conducted under its Construction Industry Arbitration Rules, or its Commercial Arbitration Rules, whichever the arbitrator(s) deem more applicable. The award rendered by the arbitrator(s) shall be final and may be entered, in accordance with applicable law, in any court having jurisdiction.

7. DOCUMENTS. ENGINEER will furnish CLIENT with the agreed-upon number of written reports and supporting documents. All documents shall be ENGINEER'S sole property, as author and owner, and ENGINEER hereby reserves and shall retain all common law, statutory and equitable rights thereto, including copyrights. ENGINEER may retain copies of any or all Work Product and CLIENT-provided documents. CLIENT agrees that all Work Product furnished to CLIENT or its agents or designees, if not paid for or if improperly used, will be returned upon demand and not be used for any purpose whatsoever. CLIENT acknowledges that the Work Product is intended for the exclusive use and benefit of CLIENT and shall be relied upon only by, CLIENT. CLIENT agrees that under no circumstances shall any Work Product be used at any location or for any project not expressly provided for in this Agreement without ENGINEER'S prior written permission. CLIENT does not require ENGINEER'S permission for regulatory submittal of the Work Product, reliance on the Work Product by Client's design team, of which ENGINEER is a member, solely for the design of the project for which the Work Product was intended, or for disclosure of the Work Product without the consent of ENGINEER. If CLIENT wishes to distribute any Work Product for reliance to any third party to which distribution for reliance is not authorized by CLIENT and the third party must first execute ENGINEER'S Secondary Client Agreement. ENGINEER'S makes no representation as to whether it specifically disclaims any express or implied warranties as to the suitability of any Work Product for any such third party's purposes. CLIENT acknowledges that a request for ENGINEER to release any Work Product to a third party creates a potential conflict of interest and any such request shall serve as a waiver by CLIENT of any such conflict. CLIENT agrees to defend, indemnify and hold Indemnities harmless from and against all Claims and Liabilities related to or arising from any unauthorized Use of the Work Product. Upon CLIENT'S request, Work Product may be provided on electronic media, however, the written copy retained by ENGINEER shall be the official document. The electronic copy is subject to all conditions contained in this Agreement. ENGINEER makes no representation or warranty and specifically disclaims any express or implied warranty that the electronic copy is accurate or complete. Any modifications of the electronic copy by CLIENT shall be at CLIENT'S shall risk and without liability to ENGINEER. CLIENT further acknowledges that (i) the Work Product may be based in part on facts and/or assumptions provided to, but not independently verified by, ENGINEER, (ii) the Work Product will reflect ENGINEER'S findings as to conditions that existed at the time the Services were performed and may not reflect conditions at a later time and (iii) ENGINEER makes no representations as to such conditions subsequent to the time the Services were performed or with respect to any facts or assumptions provided to, but not independently verified by ENGINEER.

8. SITE RESPONSIBILITY, CLIENT will arrange for right-of-entry to the Site and will execute any necessary site access agreements and provide ENGINEER with an accurate description of the Site, all available Site information, and all documents deemed necessary by ENGINEER. ENGINEER'S Services do not include supervision or direction of the means, methods or actual work of contractors, other professionals or consultants retained by ENGINEER. The presence of ENGINEER'S representative will not relieve any such contractor, other professional or consultant of its responsibility to perform its work and services in accordance with its contractual and legal obligations and in conformity with the plan specifications for the Project. CLIENT agrees that each contractor or subcontractor not retained by ENGINEER shall be solely responsible for working conditions on the Site; (ii) security and safety of persons and property during the performance of its work, (iii) compliance with applicable regulations; and (iv) providing any and all safety equipment necessary for the protection of its personnel. ENGINEER'S monitoring of contractor's or any subcontractor's procedures is not intended to include a review of the adequacy of such contractor's or subcontractor's safety measures on or near the Site. It is agreed that ENGINEER is not responsible for safety or security at the Site, other than for ENGINEER'S own and that ENGINEER does not have the right or duty to stop the work of others.



Contract between Engineer and Contractor

9. PRIORITY OVER FORM AGREEMENTS/PURCHASE ORDERS. The parties agree that the provisions of this Agreement shall govern over any Orders, and that Orders may be issued by CLIENT to, or accepted by, ENGINEER without altering the terms hereof, of any contrary language appearing therein, unless the parties specify in writing that such contrary term(s) apply to the Services which of such Orders.

NOTE: SECTIONS 10 - 12 SHALL APPLY IF SAMPLING OR OTHER INTRUSIVE SERVICES ARE PART OF ENGINEER'S SERVICES.
10. SITE OPERATIONS. Unless expressly stated otherwise, ENGINEER'S proposal or opinion of costs does not include the costs as surveying the Site to determine accurate horizontal and vertical locations of any tests, borings or well installation locations. CLIENT will be responsible for establishing test or boring locations. If surveying is required, such services will be provided by CLIENT or secured by upon written request of CLIENT and at CLIENT'S expense. Field tests or boring locations described in ENGINEER'S report or shown are based on specific information furnished by others or estimates made in the field by ENGINEER'S personnel. Such dimensions, depths and elevations are approximations. Unless expressly stated otherwise, ENGINEER'S charges do not include the costs of restoration of damage reasonably incidental to the performance of the Services. ENGINEER shall not be responsible for any damage or loss due to undisclosed unknown surface or subsurface conditions on the property owned or leased by CLIENT or third parties, except to the extent such damage is a result of ENGINEER'S sole negligence. CLIENT shall defend, indemnify and hold Indemnities harmless from and against all Liability Claims related to or arising from such undisclosed or unknown surface or subsurface conditions, except to the extent such Liabilities are determined to have been caused solely by the negligence of ENGINEER.

11. ENVIRONMENTAL INDEMNITY. CLIENT (i) hereby releases indemnities from all Environmental health and Safety Claims and defend, indemnify and hold Indemnities harmless from and against all Environmental Liabilities, except to the extent such Environmental and Safety Claims and/or Environmental Liabilities are determined to have been caused solely by the negligence of, or the willful violation of any applicable environmental health or safety law by, ENGINEER.

12. SAMPLE AND WASTE DISPOSAL. Samples generally are consumed or altered during testing and are disposed of immediately after the tests. If CLIENT wishes ENGINEER to retain any Samples, at CLIENT'S written request, ENGINEER will use its best efforts to retain Samples, but only for a mutually acceptable time and for an additional charge. ENGINEER reserves the right to refuse storage of any Samples if CLIENT agrees that is not responsible or liable for loss of Samples retained in storage. If CLIENT requests to containerize Wastes, CLIENT shall provide a secure storage location at or near the Site to prevent tampering with the Wastes. Non-hazardous Wastes will be disposed of at an additional charge at an appropriately licensed facility.

In the event that Samples or Wastes contain Contaminants, ENGINEER will either (i) return the Samples or Wastes to CLIENT for proper disposal, or (ii) using a manifest signed by CLIENT as generator and for an additional fee, have the Samples or Wastes transported to a location selected by CLIENT for final disposal. In such event, CLIENT acknowledges and agrees that ENGINEER will be acting solely as agent for CLIENT and shall at no time assume title, constructive or express, to any Samples or Wastes, CLIENT agrees to pay all costs associated with the storage, transport and disposal of Samples and Wastes.

Should ENGINEER be requested as part of the Services to hire a subcontractor for the removal of any Materials from the Site, title to the Materials will remain with CLIENT, and ENGINEER will act solely as an agent for CLIENT in arranging for and coordinating the removal and transport of the Materials by ENGINEER'S subcontractor. At no time will ENGINEER or its subcontractor take title, constructive or express, to the Materials, and all manifests incidental to such Services shall be executed by CLIENT. If CLIENT wishes ENGINEER to execute the manifests, CLIENT shall provide written authorization for ENGINEER to sign solely as an agent for CLIENT, and CLIENT hereby expressly agrees to remain the sole generator of such Materials. CLIENT shall defend, indemnify and hold Indemnities harmless from and against all Liabilities and Claims resulting from the rendering of Services as set forth in this Section 11, except to the extent such Liabilities and Claims are determined to have been caused solely by the negligence of, or the willful violation of any applicable environmental law by, ENGINEER.

13. UNANTICIPATED CONDITIONS. CLIENT agrees to advise ENGINEER of all known Contaminants and conditions existing at the Site that present a potential danger to health, the environment or ENGINEER'S equipment, if any. Should ENGINEER encounter conditions at any Site which were not reasonably anticipated and/or which increase the risk involved in ENGINEER'S performance of the Services, CLIENT, ENGINEER, in its sole discretion, may (i) continue to perform the Services to completion, (ii) suspend activities and prepare an Order Request prior to proceeding or (iii) terminate all Services. Such termination shall not be a breach of this Agreement by ENGINEER. In the event that the unanticipated condition is the presence of any Contaminants or other condition that presents a potential danger to health, the environment or ENGINEER'S equipment, ENGINEER has no obligation to assume, and does not assume, control of or responsibility for the person(s) in charge of the Site, or responsibility to report any such Contaminants or conditions to any federal, state or local authority. In any event, CLIENT agrees to notify the appropriate federal, state or local agencies, as required by law, and otherwise to disclose in a timely manner any information that may be necessary to ensure Site safety and to prevent damage to health and/or the environment. CLIENT acknowledges that ENGINEER may be required to provide such notice or to make such disclosures if CLIENT fails to do so and agrees to hold ENGINEER harmless.

14. TESTIMONY. Should ENGINEER or any employee of ENGINEER be requested by any party, including CLIENT, or compelled to give testimony (either as a fact or expert witness), produce documents or provide other evidence in a proceeding with respect to the Project Services to which ENGINEER is not a party, CLIENT shall compensate ENGINEER for its preparations, document retrieval and reproduction of testimony at 2.0 times the rates shown on its then current Fee Schedule. CLIENT also agrees to reimburse ENGINEER for reasonable lodging and meal expenses that are incurred in conjunction with providing the above testimony and other related services.



SAMPLE
DOCUMENT



Document 108

Contract between Engineer and Contractor

15. EXCUSABLE DELAY. ENGINEER shall not be in breach of this Agreement nor liable for damages due to delay or failure to get under this Agreement if such delay or failure results from circumstances beyond the control of ENGINEER. In the event of such delay for ENGINEER'S performance shall be extended for the duration of the delay.

16. INTELLECTUAL PROPERTY. Unless expressly stated otherwise, ENGINEER'S proposal or opinion of costs does not include with a search for the existence and procurement of any patent, copyright, service mark or trademark licenses, rights or other entitlement applicable to the Services, if any. CLIENT hereby releases Indemnities from, and shall defend, indemnify and hold Indemnities harmless all Claims and Liabilities caused by, resulting from, arising out of or occurring due to the infringement of patents, copyrights, service marks or trademarks by ENGINEER, except to the extent such Claims and Liabilities are determined to have been caused solely by the negligence of ENGINEER.

17. ADVERTISING. CLIENT agrees that ENGINEER in any manner may advertise and publish the fact that ENGINEER has contracted with Services, as well as use any trademark, service mark and trade names of CLIENT in ENGINEER'S advertising and promotional materials, web sites, client lists, etc. ENGINEER agrees not to publish any confidential information provided by CLIENT.

18. PAYMENT TERMS. CLIENT agrees to pay each and every one of ENGINEER'S invoices upon receipt, time being of the essence not received by ENGINEER within 30 days from the date of ENGINEER'S invoice, CLIENT agrees to pay the lesser of 1 % per month maximum legal rate on the past due amount until the amount is paid in full, plus the hourly rate for the time of ENGINEER'S employees reasonable attorneys' fees and all other costs incurred by ENGINEER in collecting the amounts due ENGINEER under this Agreement. If CLIENT reasonably objects to all or any portion of an invoice, CLIENT shall notify ENGINEER in writing within 10 days from the date of ENGINEER'S invoice, give reasons for the objection, and pay that portion of the invoice not in dispute. Failure of CLIENT to provide written notice within the allowed 10 day period shall be deemed to be a waiver of all objections to that invoice. ENGINEER may suspend and all of the Services if payment of any invoiced amount not reasonably in dispute is not received by ENGINEER within 60 days from the date of ENGINEER'S invoice.

19. INSURANCE. ENGINEER maintains the following insurance coverages:

- a. Workers' Compensation Insurance - statutory amount.
- b. Commercial General Liability Insurance - \$1,000,000 per occurrence/\$2,000,000 aggregate.
- c. Automobile Liability Insurance- \$1,000,000 combined single limit.
- d. Professional Errors & Omissions - \$1,000,000 per claim/\$1,000,000 aggregate.

20. GOVERNING LAW. This Agreement shall be governed by the laws of the State of where the work is being performed. Each of the parties acknowledges that it has had an opportunity to review and negotiate this Agreement, and this Agreement shall not be construed more strongly in favor of one party as drafter.

21. OPINIONS OF COST. If included in the Services, ENGINEER will provide opinions of cost for installation of materials, remediation and construction based upon ENGINEER'S experience on similar projects. However, such opinions are not intended for use in firm budget unless specifically agreed otherwise in advance by ENGINEER in writing. CLIENT understands the actual cost of work depends on many factors beyond ENGINEER'S control and may vary significantly from ENGINEER'S opinion.

22. TERMINATION. Either party may terminate this Agreement without cause upon 14 days' prior written notice. In such event, CLIENT shall retain possession of the Site and the materials and equipment paid for and belonging to CLIENT, and ENGINEER shall be paid for all Services performed to the date of termination. In the event CLIENT requests termination without cause, ENGINEER shall also be paid all reasonable expenses incurred in Project close out. This Agreement will terminate automatically and without notice upon the insolvency of, or upon the filing of a bankruptcy petition by or against, CLIENT.

23. SURVIVAL. All of CLIENT'S obligations and liabilities, including, but not limited to, its indemnification obligations and limitations on ENGINEER'S rights and remedies with respect thereto, shall survive completion of the Services and the expiration or termination of this Agreement.

24. SEVERABILITY. In the event any provision of this Agreement is deemed invalid or unenforceable, the remaining provisions shall nevertheless have full force and effect, and the invalid or unenforceable provision shall be interpreted and enforced as closely as possible to the intent of the parties.

25. ASSIGNMENT. This Agreement may not be assigned by either party without the prior written permission of the other. CLIENT and ENGINEER may subcontract portions of the Services to its affiliated companies and/or utilize employees of its affiliated companies in performing the Services, without the approval of CLIENT.

26. INTEGRATION. This Agreement, its attachments and all Orders, if any, constitute the entire Agreement between the parties and supersede all previous written or oral contracts or negotiations. This Agreement can be changed only by a written instrument signed by both parties.

27. ATTORNEY AUTHORITY. If this Agreement is being retained by CLIENT'S counsel, such counsel represents that he or she has reviewed this Agreement, has provided CLIENT with a copy hereof, and by its signature hereto has the authority to bind, and hereby expressly binds, CLIENT to the terms and conditions of this Agreement.



SAMPLE
DOCUMENT

Document 108

Contract between Engineer and Contractor

28. CONSIDERATION. Each grant of indemnity hereunder is intended to be to the maximum extent permitted by law and for addition of \$10.00 from . The parties agree that the charges for the Services are sufficiently adjusted to include any specific consideration recited as being payable to CLIENT, the receipt and sufficiency of which art hereby acknowledged by CLIENT.

SCOPE OF AUTHORIZED WORK

Please refer to proposal number or as described below:

CONTRACTOR (Client)

Name _____

Company _____

Signature _____

Title _____

Date _____

ENGINEER

Name _____

Company _____

Signature _____

Title _____

Date _____

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