

General Terms of Engineering Service

1.01 Basic Agreement and Period of Service

- A. Engineer shall provide, or cause to be provided, the services set for in this Agreement. If authorized by Client, or if required because of changes in the Project, Engineer shall furnish services in addition to those set for above. Client shall pay Engineer for its services as set forth in Paragraphs 7.01 and 8.01.
- B. Engineer shall complete its services within a reasonable time.
- C. If the Project includes construction related professional services, then Engineer's time for completion of services is conditioned on the time for Client and its contractors to complete construction not exceeding six months. If the actual time to complete construction exceeds the number of months indicated, then Engineer's period of service and its total compensation shall be appropriately adjusted.

2.01 Payment Procedures

- A. Invoices: Engineer shall prepare invoices in accordance with its standard invoicing practices. Invoices are due and payable with 30 days of receipt. If Client fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then the amounts due Engineer will be increased at the rate of 1.5% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Client waives any and all claims against Engineer for any such suspension. Payments will be credited first to interest and then to principal.

3.01 Termination

- A. The obligation to continue performance under this Agreement may be terminated:
 - 1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.
 - b. By Engineer:
 - 1) upon seven days written notice if Client demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed for more than 90 days for reasons beyond Engineer's control.

Engineer shall have no liability to Client on account of a termination by Engineer under Paragraph 3.01.A.1.b.

 - c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven 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 of notice 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 shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
 - 2. For convenience, by Client effective upon Engineer's receipt of written notice from Client.
- B. The terminating party under Paragraph 3.01.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- C. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Client and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

4.01 Successors, Assigns, and Beneficiaries

- A. Client and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Client and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Client and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal

General Terms of Engineering Service

representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

- B. Neither Client nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted 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.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Client or Engineer to any contractor, subcontractor, supplier, other 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 Client and Engineer and not for the benefit of any other party.

5.01 *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 Engineer's services. Subject to the foregoing standard of care, Engineer and its consultants 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 contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.
- C. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.
- D. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Client and such contractor. Engineer is not responsible for variations between actual construction bids or costs and Engineer's opinions or estimates regarding construction costs.
- E. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any construction work or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract 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. Client shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Client, subject to receipt by Engineer of full payment for all services relating to preparation of the documents and subject to the following limitations: (1) Client 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 Client 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 Client's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants (3) Client shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants 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 Client shall not create any rights in third parties.

General Terms of Engineering Service

- G. To the fullest extent permitted by law, Client and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, 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 the Project, and (2) agree that Engineer's total liability to Client under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater not exceed the available proceeds under any General Liability (including automobile) and Professional Liability Insurance required to be carried by Engineer under this agreement.
- H. Client and Engineer each agree to indemnify and hold the other harmless, and their respective officers, employees, agents and representatives, from and against liability for all claims, losses, damages, and expenses, including reasonable attorney fees, to the extent such claims, losses, damages, or expenses are caused by the indemnifying party's negligent acts, errors, or omissions. In the event claims, losses, damages, or expenses are caused by the joint or concurrent negligence of the Client and Engineer, they shall be borne by each party in proportion to its negligence.
- I. 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.
- J. All claims or disputes between Client and Engineer shall be decided by binding arbitration before a single arbitrator. The arbitration shall be administered by Judicial Workplace Arbitrations, Inc. pursuant to its Rules & Procedures for Arbitration and the final hearing shall be held in Travis County, Texas. Any arbitration will be governed by the Texas Arbitration Act, and the arbitrator shall comply with applicable law. Client and Engineer shall share equally in the costs of the arbitrator, subject to the arbitrator's right to award such costs to the prevailing party. Judgment upon the award rendered in such arbitration may be entered by any court having jurisdiction thereof, and the judgment shall be entered unless the award is vacated, modified or corrected as provided by law.

6.01 **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.

7.01 **Basis of Payment — Fixed Fee, Hourly, Plus Reimbursable Expenses**

- A. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:
 - 1. A fixed fee as stated above.
 - 2. If none is stated, fee is based on the hourly rates of Engineer's personnel assigned to the Project plus reimbursable expenses. The applicable billable rates for each person assigned to the Project are as follows:

Expert Witness Testimony Time	\$200 - \$300/hr.
Principal Engineer / Consultant	\$150 - \$200/hr.
Senior Engineer	\$90 - \$125/hr.
E.I.T. or Non-Licensed Graduate	\$70 - \$90/hr.
Technical Assistant	\$40 - \$70/hr.
Administrative Assistant	\$35 - \$50/hr.

- 8.01 **Additional Services:** For additional services of Engineer's employees engaged directly on the Project, Client shall pay Engineer on an hourly basis as described above.