

PROFESSIONAL SERVICES AGREEMENT

OWNER ENTITY: _____
PROJECT NAME: _____
PROJECT ADDRESS: _____
PROJECT NUMBER: _____
CONSULTANT: _____
ADDRESS: _____
CONTACT & PHONE #: _____
LICENSE #: _____
FEDERAL TAX ID#: _____

MAIL INVOICE TO ACCOUNTING DEPARTMENT
(Company Name Here)
(Company Address Here)
(Company Address Here)
(Company Phone & Fax Numbers Here)

DATE: _____
PM CONTACT: _____
PHONE #: _____
EMAIL: _____

1. PROFESSIONAL SERVICES: This Professional Services Agreement, ("Agreement"), is made this day of, the ("Execution Date"), by and between Contracting Entity listed above, having its principal place of business as listed above, ("OWNER"), and CONSULTANT name and having its principal place of business as listed above ("Consultant").

- 1.a. **Type of Services:** Consultant shall provide professional services ("Services") relating to: _____
- 1.b. **Services of Understanding:** Services to be performed under this Agreement will be mutually defined by Owner and Consultant and the scope and attributes of the project shall be set forth in a separate attachment to this Agreement ("Scope of Work"). The Scope of Work document will include at a minimum: the duration of the project, description of work to be performed, number of hours, number of people, job titles, firm or estimated costs related to the task, expenses if appropriate, etc. which is incorporated herein as **(Attachment A)**. If there are other attachments (proposals, specification) which should be part of this Agreement similarly label and incorporate them.
- 1.c. **Agreement Period:** This Agreement shall begin upon commencement of work and will remain in effect until the conclusion of Services, unless amended or modified in writing by authorized officers of both parties or until terminated in accordance with paragraph 22 on the backside of this agreement.
- 1.d. **Consultant agrees to commence services on:** _____
- 1.e. **Consultant agrees to have all services complete by:** _____

2. RATE OF COMPENSATION: Compensation for Services will be as stated in the description of services and shall be reflected in (Attachment A) as defined in paragraph 1.b. Services of Understanding, above. Compensation rates, "not to exceed limits", etc. shall not be modified except by mutual written amendment to this Agreement. During the term of this Agreement and for a period of three years after final payment by Owner, all of Consultant's records relating to Services performed and amounts invoiced by Consultant under this Agreement shall be open to inspection and subject to audit and reproduction by Owner or its agent or representative. accomplish and complete the work, in accordance with all terms and conditions as stated herein, on the basis checked below:

- 2.a. T&M:** Time and Material services contract plus reimbursables with NTE (Not To Exceed price):
No Dollars and No Cents **\$0.00**
Hourly Rate Schedule - Compensation for services paid for on an hourly basis under this Agreement shall be made in accordance with the hourly rate schedules in **(Attachment A)**, which is made a part of this Agreement.
- 2.b. FP:** Fixed Price services contract by Task, including estimated reimbursables:
No Dollars and No Cents **\$0.00**
Fixed Price for Professional Services - The Professional Services Consultant shall receive as compensation, subject to additions and deductions provided for herein, for professional services required herein, including services performed by professional subconsultants, plus authorized reimbursables as described in **(Attachment A)**.

3. INVOICES: Mail to Owner's Accounting Department (address listed above). The appropriate Project Number (listed above) must be included on all invoices. Invoices for Services may be billed monthly (If a different payment schedule is appropriate, substitute for the text here, for example, bimonthly, progress payments, etc). Invoices shall be payable thirty (30) days after receipt; however, in the event Owner has questions concerning any invoiced item, payment of that item shall be made only after satisfactory resolution of those questions. Owner does not pay any late fees added to invoices.

4. PAYMENTS: All compensation shall be paid in monthly installments as the various phases of the work progress. Each installment shall identify every Consultant/Subconsultant with respective payment information for each phase of work performed. Such monthly installments of the fee shall be payable within thirty (30) days of receipt of billing as follows:

- 4.a. Fixed Fees shall be paid commensurate with the amount of services completed.
- 4.b. Hourly Fees shall be paid in accordance with the actual hours expended during that particular month (hourly rates times actual hours worked from time sheets which are signed by the employee and supervisor, and which are used as the original documents to process the Consultant's payroll and/or job allocation), subject to the Owner's approval.

5. REIMBURSABLE: The Professional Services Consultant shall be reimbursed for actual and reasonable costs incurred by the Professional Services Consultant for the performance of the Owner-requested services including but not limited to; photographs, mock-ups, soil borings, topographical site surveys, environmental studies and testing, specialized site tests, design phase material and/or equipment testing, construction phase material testing, review document printing, bid document printing, record drawings provided on bond paper and CD-Rom, rendering and/or detailed presentation models, equipment rental to facilitate site inspection work, and other reasonable expenses as may be authorized by the Owner in writing. Supporting documentation, including receipts for expenses, as required in **(Attachment A)**.

6. ADDITIONAL SERVICES: If the Professional Services Consultant shall be required to perform services in addition to those contemplated herein under (Attachment A), the Professional Services Consultant shall receive compensation for such additional services on an hourly basis in accordance with (Attachment A) of this Agreement. No payment shall be made for additional services unless: 1) a request is made in writing by the Professional Services Consultant to the Owner together with an estimate of the cost of the services considered to be additional and approval is secured in writing from the Owner in advance of the performance thereof, and 2) the scope of such additional services and compensation therefor shall be confirmed by a written amendment to this Agreement and subconsultants must be attached, if applicable).

7. SPECIAL PROVISIONS: Reference all attached documents, i.e. proposals, schedule, drawings, spec's, project contact list, building rules & regulations, etc.

By executing this contract, Consultant acknowledges having read and understood all Terms and Conditions printed on the reverse side of this Contract and agrees to same.

OWNER/AGENT (Signature and Date)

(Printed Name and Title)

Consultant (Signature and Date)

(Printed Name and Title)

Additional Terms and Conditions

8. USE OF INFORMATION. All information provided to Consultant by Owner or its clients is understood to be for official Consultant use only and may not be disclosed to other parties without the express written permission of Owner.

a. Confidentiality – In the course of the performance of this Agreement, Consultant may acquire information that Owner deems Confidential, including trade secrets and unpublished technical information and data to which Owner (or companies affiliated with Owner) has proprietary rights. Confidential Information shall also include, but is not limited to, information of a third party which Owner is under an obligation to maintain in confidence. All such information is referred to hereinafter as "Confidential Information". Consultant shall retain such Confidential Information in strict confidence and shall not use it for the benefit of Consultant or others or communicate it to others without Owner's prior written agreement. Consultant shall not take photographs of any portion of Owner's facilities or duplicate any documents, or permit others to do so, without the prior written approval of Owner. Documents made available to Consultant by Owner shall remain the property of Owner and shall be returned along with all copies thereof to Owner upon request, upon termination of this Agreement, or upon completion of the Services, whichever is earliest. Nothing in this Agreement shall prevent the communication to others of any Confidential Information which Consultant can show: was known to it or its representatives prior to its receipt hereunder, was lawfully obtained by Consultant or its representative other than directly or indirectly from Owner; or became public knowledge through no fault of Consultant; is required to be disclosed by Consultant by law.

b. Nondisclosure – Consultant shall not disclose any information about this Agreement, including its existence, without the prior written consent of Owner.

c. Consultant and Employees – Consultant shall require all of its employees and subcontractors who may perform any Services under this Agreement to execute a confidentiality and nondisclosure agreement in substantially the same form as set forth in this Agreement prior to the commencement of any Service.

9. PATENTS & INVENTIONS. Owner or its client will retain the entire right, title and interest in or to inventions relating directly to the services to be performed under the terms of this agreement or dependent upon any confidential matter made available to Consultant. All patentable ideas or inventions of interest to Owner or its client relating to services performed under this agreement or dependent upon any confidential matter made available to Consultant shall be brought to Owner's immediate attention.

a. Services Performed – All service products developed by Consultant in performing this Agreement shall be deemed original creation made for Owner and shall not infringe any patent, copyright or other proprietary rights of a third party. The work product of Consultant is a work for hire made for Owner and shall be the property of Owner, with Owner owning the copyright and all other rights with respect thereto. In the event any part of the work product does not qualify as a work for hire, Consultant hereby assigns the entire copyright and all other rights to the work product to Owner. All originals and copies of such work product shall be delivered to Owner upon request or at the termination of this Agreement or any projects under this Agreement, whichever is earlier. Consultant agrees to execute, without further consideration, assignments or other documents that may be necessary to establish Owner's ownership of such work product.

b. Infringement Indemnification – Consultant agrees to defend or settle, at its expense, any claim against Owner which alleges that the work product infringes any patent, copyright or other proprietary right of a third party and will pay all costs and damages finally awarded against Owner in such claim and, at Consultant's expense, assist in the defense of such claim. If, in the discretion of Owner, Consultant fails to promptly and timely commence such defense or thereafter to diligently and continuously prosecute such defense, Owner shall be entitled to undertake such defense, including settlement, and Consultant shall reimburse Owner for all expenses incurred by Owner in such defense or settlement, including reasonable attorney fees, which shall be in addition to Consultant's obligation to pay all costs and damages finally awarded against Owner. In any action hereunder, if the work product is held to infringe on any patent or other proprietary rights of any third party or Owner's use of the work product is enjoined, Consultant shall, at its sole cost (i) procure for Owner the rights to continue using said work product; (ii) modify or replace it so that it is non-infringing; or (iii) remove the infringing work product and refund the full expense paid by Owner allocable to the infringing work product.

10. PUBLICATIONS. Owner reserves the right to determine the authorship for initial publications relating to services performed under the terms of this Agreement or dependent upon Confidential Information made available to Consultant. No publication may be made without the prior written approval of Owner.

11. PROFESSIONAL SERVICES. The Owner's approval of the Professional Services Consultant's services contemplated herein shall not be for the purpose of determining the accuracy, adequacy, completeness or coordination of the Professional Services Consultant's design drawings or specifications and shall not alter the Professional Services Consultant's responsibilities and obligations hereunder with respect to such documents. Without limitation of any provision of this Agreement, the Professional Services Consultant and any subconsultants shall perform all services under this Agreement, from the inception of this Agreement until the Project has been fully completed, with a high degree of care and diligence and in a professional, skillful, and competent manner in accordance with the professional standards of major architectural and engineering firms engaged in the design, engineering, and construction administration of projects of comparable size and complexity, and in strict accordance with all applicable laws, codes, and industry standards. Neither the review nor the approval of the work or services of the Professional Services Consultant or of any subconsultants performed in connection with the Project by any person or body, including, but not limited to, the Owner, shall relieve the Professional Services Consultant or any subconsultants from their duty to utilize and comply with the above-referenced standard of professional care in the performance of their duties hereunder. The Professional Services Consultant shall furnish efficient business administration and supervision of the Professional Services Consultant's staff and subconsultants and shall perform the services in the most expeditious and economical manner consistent with the standards set forth in this Agreement.

12. INDEPENDENT CONTRACTOR. In performing Services hereunder, Consultant is an independent contractor and not an agent or employee of Owner. As such, Consultant does not have the right or power to enter into any contract or commitment on behalf of Owner unless specifically authorized to do so in writing.

13. Assignment. Consultant may not assign or transfer this agreement or any rights or obligations under it whether by operation of law or otherwise without the prior written consent of Owner.

14. Notices. All notices pursuant to this Agreement shall be sent by certified mail; postage paid, and shall not be deemed to have been given until received by the other party.

15. PERSONNEL. Consultant represents that it has, or will secure at its own expense, all necessary personnel required to perform Services under this Agreement. Such personnel shall not be employees of nor have any contractual relations with Owner. All of the services required hereunder shall be performed by Consultant or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services. Consultant warrants that all Services shall be performed by skilled and competent personnel to the highest standard in the field.

16. Compliance with Laws. Consultant shall comply with all Federal, State, and Local laws, ordinances, rules, and regulations in the performance of Services, including but not limited to the Occupational Safety and Health Act; the Truth in Negotiations Act; the Resources Conservation and Recovery Act; and applicable requirements of the Fair Labor Standards Act. Consultant shall defend and hold Owner harmless from any loss, damage, or costs arising from or caused by any actual or alleged violation of any Federal, State, or Local law, ordinance, rule or regulation.

17. CONSULTANT'S INSURANCE. Consultant shall provide at all times the following minimum insurance coverage as approved by Owner as follows:

- a. Workmen's Compensation Insurance complying with the laws of the State in which the work is to be performed.
- b. General Liability Insurance in the amount of \$1,000,000 each occurrence and \$2,000,000 Aggregate.
- c. Umbrella Liability Insurance in an amount not less than \$2,000,000 combined single limit to cover bodily injury or accidental death, and property damage, including contractual liability coverage for Consultant's indemnity in paragraph 19.
- d. Automobile Liability Insurance in the amount not less than \$1,000,000 combined single limit to cover bodily injury, accidental death, and property damage.
- e. Professional Liability Insurance (E&O) or Professional Liability Insurance in the amount of \$2,000,000 each occurrence.
- g. Consultant shall furnish Owner certificates evidencing the insurance coverage prior to commencement of Services under this Agreement. Each of the certificates shall provide that the coverage shall not be cancelled until at least (30) days after advance written notice has been given to Owner.

19. ERRORS AND OMISSIONS POLICY. By Policy, Owner reserves the right to recover from the Professional Services Consultant all or a portion of the costs associated with change orders issued to correct errors or work omitted in the construction documents prepared by the Professional Services Consultant. Consequential damages, including any delay of work or damages incurred by other parties due to errors and omissions may be included in the recovery. The Error and Omission Policy is incorporated herein and by reference made a part hereof and is available from the Owner's Representative.

20. Indemnification. Consultant agrees to defend, indemnify, and hold harmless Owner, its directors, officers, agents, and employees from and against any and all claims, demands, losses, and expenses, including attorney fees, arising out of suits, claims and demands by reason of injury or death of any person(s) or damage to any property which occurs in association with Services performed by Contractor or subcontractors, their agents or employees, except to the extent such claims or losses are due to the negligence of Owner, its employees, or agents. Consultant agrees to indemnify, hold harmless and defend Owner in the case of any violation of patents, trademarks, copyrights or service marks in the performance of this Agreement.

21. Sub-contracts. The Consultant shall not sub-contract any of the Services contemplated to be performed by the Consultant under this Agreement without the written consent of Owner. If such written consent is granted, the Consultant shall if requested furnish copies of all sub-contracts to Owner.

22. Termination. Owner shall have the right at its absolute discretion to terminate this Agreement, in whole or in part, effective five (5) business days following Owner's written notice to Consultant. In the event of such cancellation, Owner shall have no obligation to Consultant except the obligation to pay all costs actually incurred by Consultant prior to the date of termination plus a normally accepted trade allowance on such costs. In no event shall Owner be obligated to pay an amount in excess of the amount set out in Owner's order for the services; advance payments being resolved accordingly. If Owner's contract is canceled as a result of the default of Consultant, Owner shall have no obligation to reimburse Consultant for any services performed by Consultant pursuant to Owner's order or any resulting contract.

23. QUIESCENT PERIOD. In the event that no work occurs for a 181 days during this Agreement and not occasioned by default of the Professional Services Consultant, then this Agreement will automatically terminate and the Professional Services Consultant shall be paid for services performed prior to the quiescent termination period, pursuant to the provisions described in paragraph 2., plus any reimbursements then due. The Professional Services Consultant cannot invoice against any previous Agreement that has been automatically terminated due to the quiescent termination clause.

24. Disputes. Any dispute arising under this Agreement, which is not disposed of, by agreement of the parties, shall be decided by a court of competent jurisdiction. Pending settlement or final decision of any such dispute, Consultant shall proceed diligently with the performance of this Agreement in accordance with Owner's direction.

25. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Virginia. This agreement is binding on all parties to the Agreement.

26. Severability. In the event any provision of this Agreement is held to be unenforceable or invalid, the remaining provisions of this Agreement will remain in full force and effect.

27. Multiple Copies or Counterparts of Agreement. The original and one or more copies of this Agreement may be executed by one or more of the parties hereto. In such event, all of such executed copies shall have the same force and effect as the executed original.

28. Entire Agreement. This agreement and associated duly executed Attachments hereto constitutes the entire agreement and understanding between the parties and supersedes and replaces any and all prior contemporaneous proposals, agreements, understandings, commitments or representations of any kind, whether written or oral, relating to the subject matter hereof or to the Services to be performed. Notwithstanding anything contained herein to the contrary, no subsequent modification, amendment, or addition to this Agreement shall be binding upon the parties unless reduced to writing and signed by the respective authorized officers of the parties.